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THE
ARGVMENTS

OF
Sir RICHARD HUTTON Knight,
One of the Judges of the Common Pleas :

A N D
Sir GEORGE CROKE Knight,
One of the Judges of the Kings Bench :

TOGETHER WITH
THE CERTIFICATE

OF
Sir JOHN DENHAM Knight,
One of the Barons of the Exchequer :

*Vpon a Scire facias brought by the Kings Majesty, in the
Court of Exchequer, against John Hampden Esquire.*

AS ALSO
The severall Votes of the Commons and Peeres in
PARLIAMENT, and the Orders of the Lords for the
vacating of the Judgement given against the said Mr
Hampden, and the vacating of the severall Rolls in each
severall Court, wherein the Judges extrajudiciall
Opinions in the Cases made touching
SHIP-MONEY, are entred.

L O N D O N,
Printed by M. Flesher and R. Young, the Assignes
of I. More Esquire. 1641.

THE
ARGUMENTS

Sir RICHARD HUTTON Knight
One of the Judges of the Common Pleas :

Sir GEORGE CROKE Knight
One of the Judges of the Kings Bench :

TOGETHER WITH
THE
SIR JOHN
One of the Judges



Upon a Scite facias brought in the King's Majesty in the
Court of the King's Bench
The several Votes of the Commons and Peers
in Parliament, and the Orders of the Lord
Justices of the Judgement given against the said
Petitioners, and the voting of the Lord Justices
in the Court, wherein the Judges of the said
Opinions in the Cases made touching
said Matters are contained.

Printed by M. Hefser and R. Jones the Assignees
of A. More Esquire. 1641

THE
ARGUMENT

OF
M^r. Justice HUTTON.

28. Aprilis
Anno. 14.
Car. Regis
Anno. 3. Do.
1638.

A *Scire facias* brought by the Kings Majestie *Buck. ff.*
in the Exchequer against John Hampden.

The case upon the pleading appears to be this.

THE Kings Majestie, by his writ under
the great Seale of England, bearing date
the fourth day of August, in the eleventh year
of his raigne, directed to the Sheriffe of the
County of Buck. and to the Bailiffe, and Bur-
gesse, of the Borough, and parish of Buck-
ingham, and to the Mayors of divers particu-
lar Townes, in the said County of Bucking-
ham, and to all honest men in the same,
and in all the Townes, Villages, and places

And

A

in

in the said County, sendeth greeting : reciting that where hee is given to understand, that certaine Robbers, Pirates, and spoilers by Sea, as well enemies to the name of Christians, as Mahumetans, and others being assembled together, not onely to take and spoile our Ships, and the goods and merchandizes ; but also the goods and merchandizes of the Subjects of our friends upon the Sea, (and which had of old been used to be defended) at their pleasures, and to take and carrie the men in those ships into most miserable captivity, and there keepe them.

And the King doth see that they daily provide ships to vex our Merchants, and grieve our Kingdome, unlesse speedy remedy bee provided therein : And considering the perils which in these times of war are every where imminent.

The King for the defence of the Sea, the security of his Subjects, the safe conduct of the Ships, and merchandizes, being willing (by Gods assistance) to provide, the rather for that he and his progenitors, Kings of England, have beene Lords of the Sea.

And

And where this charge of publique defence which concerneth all, ought to be supported by all, as by the Laws and Customes of this Realme of England it had been done. Therefore the King by his Writ commanded, that a Ship of warre of the burthen of foure hundred and fifty Tunnes, fitted and furnished with all things necessary for warre, and one hundred and eighty men able and sufficient victualled, and this to be done before the first of *March*: And then at that time to come, so prepared, furnished, and victualled, for the space of twenty six weekes then next following, and with wages for so many men of warre for that time, to Portsmouth, into the companie of such other ships of our Subjects, and our owne as shall bee there, under the government of such a man, to whom before that day wee shall commit the custody of the Seas; and to goe from thence with the Kings ships, and the ships of other our faithfull Subjects, for the defence of the Sea, and the repulsing and overcomming of any whosoever, which shall molest and hinder the comming in, or going

out of our Merchants, or others upon the Seas.

A power is given by the writ to the Sheriffe, and to the Mayors, and any two of them for Corporate townes, whereof the Sheriffe to be one, to asseſſe what ſummes the Mayors and Corporations ſhall pay towards this charge, if they doe not, then to be done by the Sheriffe alone.

A generall power to the Sheriffe, to asseſſe all the inhabitants of all other Townes, Villages, Hamlets and places, and their Tenants, other then such as ſhall have a part of the ſaid ſhip, or ſhall ſerve in the ſaid ſhip, to contribute towards the neceſſary expence for the proviſion of the premies upon every man according to his eſtate and faculty: And ſuch portions ſo to be aſſeſſed upon them, to levie by diſtreſſe or other due meanes.

A power to name Collectors.

And a power to commit to priſon all ſuch as the Sheriffe ſhall find rebellious, or contradicting the premies; There to remaine untill the

the Kings Majestie shall thinke fit to give order for their enlargement.

And by vertue of this writ, Sir Peter Temple, then Sheriffe of the said County, did asseſſe upon the Defendant twenty shillings, towards this charge, which was after allowed by the succeeding Sheriff, Sir Henry Proby, and the Defendant was required to pay it, but refused.

And then by a Certiorare out of the Chancery, directed to those Sheriffes, which had beene Sheriffes betwixt the fourth day of August, in the eleventh yeare, and the first of March, then following, to certifie what sum of money had been asseſſed upon the Defendant for contribution.

They certified the said summe of twenty shillings.

Then by Writ of *Mittimus*, out of the Chancery, bearing date the fift day of May, in the thirteenth year of the Kings Majesties raigne, the writ of 14. August, and undecimo Car. and the Schedule returned into the Chancery, whereby the Defendant was so asseſſed, are

This Writ is dated 9. Martii An. 12. Car.

The Writ of *Mittimus* beares date the 5. of May. Anno 13. Car. Regis.

sent into the Exchequer, to proceede against the Defendant, for the levying of the summe of twenty shillings, which he hath not paid, and proceede there to do that which of right, and according to the custome, ought to bee done for the levying thereof.

In this Writ of *Mittimus* it is contained, that the writ bearing date the fourth of *August*, *Anno 11. Car.* was granted for the defence of the Realme, the safegard of the Sea, the security of the Subjects, and for that the safety of the Kingdom of England was in danger.

But these causes are not expressed in the Writ; but other particular causes.

And upon the tenours of these Writs, depending in the Chancery, thus sent into the Exchequer; this Writ of (*Scire fac.*) is awarded, bearing date the twentieth day of *May*, in the thirteenth yeare of the Kings Majesties raigne, against the said *Iohn Hampden*, to shew what hee hath to say for himselfe, why the said summe so assessed upon him and not paid, ought not by him to be satisfied, and to doe further what that Court should thinke fit to order.

To

To which writ the Defendant appeared in *Trinitie* Terme, and praied the sight of the writ of the fourth of *August*, and the *Certiorare*, and the *Mittimus*, and they are all entred (*in hæc verba.*)

Whereupon the Defendant did demurre generally.

And Master Attorney generall joyned in demurrer, and the Record being read there and opened, the Court did adjourne it into the Exchequer Chamber, before any argument there at the Barre.

The sole Question is, Whether this Scire fac. doth lye or not.

And I am of opinion that it doth not lye, but that judgement ought to be given for the Defendant, both for the matter, and for the manner of this proceeding.

And to the intent that whatsoever I shall say, may the better be understood; I will observe this order in my Argument.

First, I will prove by severall Acts of Parliaments,

I.

Parliaments, and by some Authorities in books, and by some reasons, that the Kings Majesty cannot at this day, impose any such charge in generall upon all his Subjects as this is, without their consent in Parliament.

2. Secondly, I will give answer to such objections, as have beene made by the Kings Counsell, and by some of my Brothers, against these Statutes, and to such cases, as they have applyed to prove the contrary.

3. Thirdly, I will answer those precedents, which have beene insisted upon, to prove that the like charge hath beene before imposed by the Kings progenitors, Kings of this Realme, And I will shew some precedents of more force to the contrary.

4. Fourthly, I will insist upon the disuse of the attempt of imposing any such generall charge, by this way, at any time since the beginning of the raigne of King Henry the fourth, which is almost two hundred and fifty yeares since: And many other courses and kinds of attempts, for levying of monies: And this way not attempted till of late.

5. Fifthly, I will insist upon the Writ of

4. Augusti

4. *Augusti Anno 11. Car.* That the matter therein comprised, doth not containe sufficient warrant, for the levying of such contribution : And that the matter which is added in the *Mittimus*, cannot supplie or make the Writ of 4. *Augusti* sufficient : And that the *Scire fac'* it selfe is insufficient.

Lastly, I will give some answer to that which heretofore was objected by M^r. Solicitor : That the Judges had formerly by a subscription to some propositions, which they were required to answer his Majesty (as he conceived) resolved this point already. 6.

My Brother *Jones* hath beene long, and I will observe my owne method, and answer him by my argument; And I will contract that which I have to say, in as short a manner as I can.

And for the first point and reason, which I doe insist upon, is, That this power to charge the people of this Realme at this day, by the King onely, is taken away, bounded and limited by diverse Acts of Parliaments, to be done by consent of the Subjects, and onely in Parliament. 1.

An. 9. Hen. 3.
Magna Charta
cap. 29.

First, by the Statute of *Magna Charta* it is enacted, that no Free-man shall be taken or imprisoned or disseised of his Free-hold, or of his liberties, or Free-customes, or out-lawed, or exiled, nor by any means destroyed; neither will we come upon him, or send him to prison, but by lawfull judgement of his Peeres, or by the Law of the Land.

This Statute, as appears by the *Inspeximus* of King *Edward* the first, sonne of King *Henry* the third, was made of the free good will of the King, for the good of the Church, and for the amendment of the Kingdome.

See the 1. st.
chapter of
Magna Charta
cap. 38.

And if you looke upon the last Chapter of *Magna Charta* cap. 38. the King grants, that he and his heirs will for what concernes him well observe and keep the same in his Kingdome, and will that aswell Clerkes, as Laymen shall observe the same: And this was not done for nought, for the Clergie, and the Communalty, did give to the King for these liberties, the fifteenth part *omnium mobilium*, as appears in the same Chapter.

And further in the said Chapter it is contained, that the said King, for him and his
heires

heires did grant that neither he, nor his heires should doe any thing, nor procure to be done any thing whereby these liberties thus granted might be infringed or diminished: And that if any thing were done by any other to the contrary, it should bee void and held of no force: See the Statute.

And then King *Edward* the first his Son in the five and twentieth year of his raigne, The very first Chapter of that Parliament, confirmed the Charter of *Magna Charta*, for the honour of God, and of the holy Church, and profit of the Realm, with writs to all Justices, Sheriffes and others, That they cause the said Charter of liberties to be published: And to declare to the people, that we have confirmed them in all points; And that our Justices, Sheriffes, and other Ministers, which under us have the Laws of our land to guide, shall allow the same. That is to wit, the great Charter, as the Common Law, and the Charter of the Forest, for the wealth of our Realme.

Statute of
25. Edw. 1.

And where my brother *Berkley* did say in his Argument, that the words of the Statute

of *Magna Charta* were *quod habeant libertates suas*, but that there were no particular liberties mentioned which were *libertates suas*: To that the answer is easie, for it is in the Preamble and the first Chapter, *Habeant libertates subscriptas tenendas in Regno nostro Angliæ tenend. eis & heredibus suis imperpetuum*. And it cannot be denied, but that the clauses of the writ of *4. Augusti* which gives not onely power to distraine, but if any be rebellious or contrariant to the premises, to commit them to prison, there to remaine untill the Kings Majestie shall for their deliverance thinke fit to order otherwayes, are directly contrary to the expresse letter of this Statute of *Magna Charta*, and so consequently against the law of the Land: for this Statute is made by the said Statute of the five and twentieth of King *Edward* the first, the law of this Land.

This Statute of *Magna Charta* hath beene ever since, and now is put in use for the great priviledge of the triall of the Peers of this Realme for Treason or Felony: For there [*Peeres*,] is grounded upon the words of this Statute (*viz.*) *per legale judicium parium suorum*, as
you

you may see in *Stamford* in his booke of the Stamford.fol. 152.
 Pleas of the Crowne, fol. 152.

'Then by the Statute of 25. *Edw. 1. cap. 5.* It is 25. E. 1. ca. 5.
 enacted, And for as much as diverse people of
 our Realme are in feare, That the aides and
 taxes, that they have given to us before-time
 towards our warres and other businesse, of
 their owne grant and good will, howsoever
 they were made, might turne to a bondage
 to them and their heires, because they might
 be at any other time found in the Rolls: And
 likewise the prizes taken by our Ministers
 through the Realme, we have granted for us
 and our heires, that we shall not draw any
 such aides, taxes or prizes, into a custome for
 any thing that hath beene done before, bee it
 by Roll or any other Precedent that may bee
 found.

And in the same Parliament in the sixt
 Chapter it is thus, We have granted for us
 and our heires aswell to Archbishops, Bi-
 shops, Abbots, Priors, and other folke of
 holy Church, as also to Earles, Barons, and
 to all other the communalty of the land, That
 for no businesse from henceforth, we shall
 take

“take such manner of aides, taxes, or prizes but
 “by the common consent of the Realme, and
 “for the common profit thereof: Saving the
 “ancient aides and prizes due and accustomed.

Observe the words in this Statute, that for
 no businesse he shall take any manner of
 aides, taxes or prizes, but by the common
 consent of the Realme.

The words of this Statute are so plaine
 (for no businesse,) as they include all, and ad-
 mit any exposition.

34.Edw.1.
cap.1.

Then in 34.*Edw.1. cap.1.* It is enacted, No
 “tallage nor aide shall be taken or levied by us
 “or our heires in our Realme without the
 “good will and assent of Archbishops, Bi-
 “shops, Earles, Barons, Knights, Burgessees, and
 “other Free-men of the land.

14.Edw.3.
cap.1.

Then by a Statute made in the fourteenth
 yeare of King *Edward* the third, it is in this
 “manner; That whereas the Prelates, Earles,
 “Barons, and Commons of our Realme of
 “England in our Parliament holden at West-
 “minster upon Wednesday in Mid-lent in
 “the fourteenth year of our Raigne over Eng-
 “land, and the first over France, have granted

to

to us of their free and good will in aide of “
the speed of our great businesse which we “
have to doe, aswell on this side the Sea, as “
beyond, The ninth sheafe, the ninth fleece, “
and the ninth Lamb, to be taken by two years “
next comming after the making of the same; “
And the Citizens, and Burgessees, of Cities, “
and Boroughs, the very ninth part of all their “
goods; And the foraine merchants and o- “
thers which live not of graine nor of flocke “
of sheepe, the fifteenth part of their goods to “
the value, We willing to provide for the in- “
dempnitie of the said Prelates, Earles, and “
other of the Commualty, and also of the “
Citizens, Burgessees, and Merchants aforesaid, “
will and grant for us, and our heires to the “
same Prelates, Earles, Barons, and Com- “
mons, Citizens, Burgessees, and Merchants, “
that the said grant which is so chargeable, “
shall not another time be had forth in exam- “
ple, nor fall to their prejudice in time to come, “
nor that they be from henceforth charged “
nor grievd to make any aide or to sustaine “
the charge, if it be not by common consent “
of the Prelates, Earles, Barons, and other “
great.

great men, and Commons of our said Realm of England, and that in Parliament.

25. Edw. 3.
cap. 8.

Then by the Statute made in the five and twentieth year of King *Edward* the third cap. 8. it is enacted, That no man shall be compelled to finde men of armes, holberts, or archers, other then such as hold by such services, if it bee not by common consent and grant in Parliament, for that is against the common right of the Realme. Which last words, [for that is against the common right of the Realme] are in the Parliament Roll, but left out of the printed books of the Statutes.

Confirmed by
an act of Par-
liament in
4. Hen. 4.

And this Act of Parliament is recited by an Act of Parliament, made in the fourth yeare of the raigne of King *Henry* the fourth the 13. Chapter, and enacted and observed in all things.

1. Rich. 3.
cap. 2.

Then in the first yeare of King *Richard* the third, and the second chapter it is recited, That the Commons of this Realme, by new and unlawfull inventions, have beene put to importune charge, especially by a new imposition called A benevolence; It is enacted, That the Subjects & Communalty of this Realm,
from

from henceforth in no wise be charged by any such charge or imposition called a Benevolence, nor by any other such charge.

Then comes the Act of Parliament, made Anno 3. Car. in the third yeare of the Kings Majesties owne raigne, called The Petition of right, whereby the Statute made in the time of King Edward the first, commonly called the Statute *De tallagio non concedendo*, is mentioned, and many particular incroachments recited to be made upon the liberties of the Subject; And many particulars being recited, it is required to be enacted That no loane of money against the will and good liking of the Subjects, Billeting of Souldiers, and Mariners in mens houses, there to sojourne against their wills, Commissions of Martiall laws in times of peace. They doe therefore humbly pray you, that no man be hereafter compelled to yeeld or make any gift, loan, benevolence, tax, or such like charge, without common consent by act of Parliament, whereunto his Majesty consented with this subscription, *Soit Droit fait come est Desire.*

And these are the Statutes whereupon I

relie that this charge cannot be laid upon the Subject by this Writ onely without the aide of some act of Parliament.

Now for authorities of Booke cases, and other authorities concurring herewith.

13.H.4. fo. 14.
15. 16.

First, by the Case of 13.Hen.4.fol.14,15, and 16. which were long debated, It appears that the King had granted an office, for the measuring of Cloth in *London*, and a power to take so much for his labour.

There was a Writ under the great Seale directed to the Mayor of *London*, commanding him to put the Patentee in possession; and the Patentee had put it in practice, and divers had paid money to the Patentee: And yet after upon a returne, that there was no such office, it is adjudged a good returne; And it is there agreed, That the King cannot by his Patent create or erect a new office, in charge of his people, without the speciall assent of the Commons: And the King cannot grant to any, that he shall take of every Carriage that shall come over such a bridge such a summe,

sum; And it is said there in the sixteenth lease, that a common charge, though it found to the profit of the people, cannot be granted out of Parliament: And this in my opinion is a strong case in the point.

Then see 37. *Hen. 8. Broke in Patents, placito.* 37. H. 1. Broke Patens Pla. 100. The Kings Majestie may erect Markets and Faires with tolls incident: For that concerns onely such as will buy: but the King cannot grant toll *Travert*, nor a Thorow toll, nor alter or change Laws or Customes of the Realme, nor make land deviseable or gavelkinde or Borough English, or change gavelkinde or Borough English to be descendable to the heire; which is so agreed in divers Books. 14. H. 4. fo. 9. 37. H. 6. fo. 27. 8. H. 6. fo. 19. concurring.

Then in the booke of *Fortescue* of his commendation of the Laws of England; it is thus written in the ninth chapter the five and twentieth lease, The King of England cannot alter or change the Laws of his Realme at his pleasure; For why, he governeth his people by power, not onely Royall, but also politique: If his power over them were onely Royall, the he might change the Laws of his Realme, Fortescue in his booke de Laude legum Anglix fo. 25. cap. 9. He was made Lord chiefe Justice of the Kings bench, Anno 19. Hen. 6. and made Chancellor of England as is said in the Booke.

Realme, and charge his Subjects with tallage and other burthens without their consent; And such is the dominion which the Civill law purports, when they say that the will of a Prince hath the force of a Law: But from this much differeth the power of a King, whose government over his people is politique; for he can neither change Laws without the consent of his Subjects, nor yet charge them with strange impositions against their wills. Rejoyce therefore, O Sovereign Prince, and be glad that the Laws of your Realme, wherein you shall succeed, are such; For it shall exhibit to you and your people, no small security, and comfort.

The same author. cap. 36. fo. 84.

And the same Author, fo. 84. cap. 36. saith thus; That the King by his Officers (though the owners would say nay) may take necessities for his house at a reasonable price to be assessed by the Constable; Neverthelesse he is bound by the Law to pay therefore, either presently or at a day to be limited by the higher Officers of the house: For by the Laws hee may take away none of his Subjects goods, without due satisfaction for the same; neither doth

doth the King there either by himselfe, or his servants and officers, levie upon his Subjects Tallages, Subsidies, or any other burthens, or alter their Laws, or make new Laws without the expresse consent and agreement of his whole Realme in his Parliament.

And thus I have done with the positive part of my argument, and I will indeavour to be shorter in the rest.

THE

3

THE SECOND PART.

NOW in the second place, I will give an answer to all such objections that have beene made by the Counsell of the King at the Barre; and by some of my Brothers in their arguments against these Statutes.

Object. 1. First, it hath beene objected, that the Statute *de Tallagio non concedendo* was not a Statute.

Resp. 1. And this was insisted upon by M^r. Solicitor, and not without many probabilities of the Kings not then being in England, and many other things by him alledged; Yet because it hath beene generally agreed by all that have argued since, that it was and is an Act of Parliament, and is so recited in the Petition of right, I will say no more to that; But thereby and by his insisting so much upon that to be no Statute, I doe conceive that he understood that Statute to be (as indeed it is) a forceable Statute against this imposition of a charge by Writ, without the consent of the Parliament.

Object. 2. The second objection was; That the words, Aides, Tax, and Tallages, doe not extend

extend to this provision of Ships of Warre, and men for defence, and that there is no exception of the aides which are due to the Kings Majesty, for making his eldest sonne Knight, nor aides for mariage, nor other aides by tenures.

The answer is easie: for the words of the *Resp. 2.* Statute of the fourteenth year of King Edward the third, are, 'That they shall not from henceforth be charged or grieved, to make any aide or to sustaine any charge.'

These are words so generall, that all is comprehended which charges all; And for the aides of making the eldest sonne Knight, and the other aides, they are not generall to charge all, but particular, such as are charged by tenure, and neede no exception.

And yet in the Statute of 25. *Ed. 3. cap. 8.* there is an exception (of other then those which hold by such tenure) which exception was needlesse, because no charge of any in particular is within any of the acts of Parliament; but such as are generall, and extend to charge all the Subjects of the Realme, as this doth.

There hath beene another objection made *object. 3.* against

against the Statute of 14. *Edw. 3.* that it should be but temporary, for the time of the continuance of those wars; And my Brother *Berkley* did except to this Statute, because it is not mentioned in The petition of right.

Resp. 3.

To this there needs no other answer, then the Statute it selfe, First the preamble, and then the body of the Act, (*viz.*) That from henceforth, they shall not be compelled to make any aide or sustaine any charge but by the common consent of the Prelates, Earles, Barons, Great men and Commons of our Realme of England, and that in Parliament; This is an absolute Statute.

It is true, that the latter clause whereby the King was pleased, that the profits to be made of his Wards, Marriages, Escheats, and other profits should be disposed of for the maintenance of the Realme of England, and of his wars in Scotland, France, and Gascoy, and elsewhere, during the said warres, This was a matter of the Kings bounty and Grace, and was to continue no longer; And to say, that because it was not particularly mentioned amongst other in The petition of right, therefore

fore it should be of no force, doth not stand with any reason to impeach the Statute, nor many others that are not there enumerated.

The last and greatest Objection that hath *Object. 4.* beene made, first by my Brother *Crawley*, and after by others, and insisted upon by my Brother *Jones*, is; That this is a Prerogative, or power Royall, so incident to the Kings Majesty, that it cannot be taken away by any act of Parliament; And, as it was said, it is *proprium quarto modo*: And in prooffe thereof it was affirmed, that when there was in the beginning of King *James* his raigne a purpose to have taken away all tenures by an act of Parliament, and to have shut up the Court of Wards; It was resolved by the Judges, that such a Statute had beene void.

First, I doe agree, that there are many things so incident in power to a King, as are not in the power of any Parliament to take away, as appears by the case of 1. *H. 7.* of the disposing of the right of the Kingdome, power of making Warre and Leagues, The power of the coine, and the value of coines, and many other Monarchicall powers and
d prero-

prerogatives, which to be taken away, were against naturall reason, and are incidents so inseparable that they cannot be taken away by Parliament.

And yet I will shew you, and prove, that Acts of Parliament have bounded, limited, and qualified the Kings ancient and inherent Prerogatives of like nature, and of as great importance as this is.

Ploy.fo.332.
The Case of
Mynes.

It is said in *Ploydon*, in the case of Mines, f.332. That every Prerogative that the King hath, contains in it selfe a matter of Prescription, and as it is there said; That before the Statute of, 2.*Edw.3. cap.12.* if one held his Land by Knights service of the King *in Capite*, and had aliened that land in fee, without the Kings licence, the land was forfeited to the King; And the King should have had the land to him and his Successors for ever; The King willeth and granteth, that the King shall not hold them as forfeit: But shall take a reasonable fine, to be assessed in the Chancery by due Processe.

fo.322.

And in the same booke, fo.322. The Kings Majesty might by Prerogative have taken
woods,

woods in any mans wood, for the repaire of his Castles: but by the Statute of *Magna Charta*, cap. 21. he is excluded of that; The words are [Neither We nor our Bailiffe, nor any other for us] shall take wood of any other mans, to repaire our Castles, nor to doe any other thing with them, but by good will of him whose wood it is.

And by the Statute of 25. *Edw. 3. cap. 1.* It is enacted that from thenceforth, neither he nor any of his heires, shall take title to present to any benefice of the right of another, of any time of his predecessors.

25. *Edw. 3.*
cap. 1.
11. *H. 4.*
fo. 7. 8.

And the King brought a *Quare impedit*, and made title to an avoidance in the time of King *Edward* the first Sonne of King *Henry* the third; And the Defendant pleaded this Statute, and upon debate and argument, although it was alleadged, that this Statute had not beene put in use, It was adjudged, that being a Statute in force, it might be put in use: And so it was judged against the King.

And this is a strong prooffe, that in one of the most ancient Prerogatives incident to the King, of *Nullum tempus occurrit Regi*, which is

grounded upon many reasons, yet by an Act of Parliament, this Prerogative was taken away.

The Statute of
7.H.cap.3.

See the Statute of 7.H.8.cap.3. The informer is limited to beginne his suit within a yeare, and the King within two yeares and not after, hereby the Kings Prerogative of *Nullum tempus* is taken away and limited to two yeares.

21.Iac.cap.2.

The Statute of 21.Iac.cap.2. whereby our late King *Iames* of famous memory, was content to exclude himselfe, to make any title to lands, whereof he hath not beene in possession, or which have not lawfully beene put in charge within sixtie yeares: But enacted, that such persons as doe hold those lands, shall hold them still without trouble: And that Patent of concealement, or defective title, shall not bee a putting in charge, or standing in *super* within that Statute.

21.Iac. cap.14.

I might be infinite in this, but I will conclude with the Statute of 21.Iac.cap.14. That where the Kings Majesty by his Royall Prerogative, may inforce the Subject in informations of intrusions, to plead specially, and

to

to shew his title, or to lose the possession: The Kings Majesty out of his gracious disposition towards his loving Subjects, and at their humble suit (being willing to remit a part of his ancient Regall power) is well pleased that it be enacted: And be it enacted; That where the Kings Majesty hath beene, or shall be out of possession, for the space of twenty yeares; or shall not have taken the profits of any lands, or tenements, within the space of twenty yeares; That in such case the Defendant may plead the generall issue, if they thinke fit: And shall not be pressed to plead specially; And shall retaine the possession, till the title be tried and found for the King. And that no *Scire facias*, shall be brought to put the party to a speciall pleading, where an information may be fitly brought.

By these and many other of the like nature; It must be agreed, that ancient, Regall, and inseparable Prerogatives, and powers, may be, and have been qualified, bounded, and limited for the ease and benefit of the Subjects.

And give me leave to say this of Parlia- 36. Edw. 3.
d 3. ments, cap. 10.

ments, that they have beene esteemed by the wisdom of former times, to be so necessary, as there were acts of Parliament heretofore made in the time of King Edward the third; which you may see, *Anno 36. Edw. 3. cap. 10.* That for the maintenance of Articles, and Statutes, and for the redresse of divers mischiefs, and grievances, which daily happen, it was enacted that a Parliament should be holden every yeare.

Bracton fo. 1.

Another reason is, that they have beene esteemed necessary for determining of difficult matters: And therefore Bracton, who wrote in the time of King Henry the third, fo. 1 *Leges Anglicanae & consuetudines approbatae consensu utentium, & sacramento Regis confirmatae, mutari non poterunt nec destrui, sine consensu & consilio eorum, quorum consensu & consilio fuerint promulgatae. si autem aliqua nova & inconsueta emergerint, quae prius usitata non fuerunt in Regno, et obscurum sit eorum iudicium, tunc ponentur iudicia in respectu usque ad magnam curiam, ubi per consensum curiae terminentur.*

The Stat. of
Winchester.
13. Edw. 1.
Lib. 2. Edw. 3.
fol. 7.

See to this purpose, an excellent case in 2. Edw. 3. fo. 7. upon the Statute of Winchester, where

where a robbery was done, and a recovery against the hundred next adjoyning, and a levy made of the Bishop of *Coventries* tenements, of the Hundreth in *Staffordshire*, The Bishop came into Court and pleaded a Charter of exemption made by King *Richard* the first, and a confirmation thereof by King *Edw.* the first: And for the difficulty upon the Charters, and upon the exposition of the words of the Statute, there came a Writ to remove the record into the Parliament, *Quindecim Pasch.* and the Sheriffe was appointed to attend there with the money levied.

See the Register, where it appeares, that certaine Messengers had from the Pope served Processe upon an Officer of the Court of Chancery, then held at *Yorke*, to command him by those Bulls to appeare at Rome; And for this contempt, the party who served the said Processe, was committed to the Castle at *Yorke*: And at length the Kings Majesty by the intreaty of divers of the Great men of the Realme, was content, upon taking bond, that he should answer the said contempt, *ad proximum Parliamentum nostrum, ubicunq; illud summon-*

Vide le Register, fo. 27 b.

niri

The Statute
Winch. 2.
cap. 28.

niri contigerit, to deliver him out of prison.

Then the Statute of *Winchester* 2. the twenty eighth chapter of *Concordent Clerici in Cancell. de novo brevi, vel attendent in prox. Parliamentum.*

The further necessity & estimation, which have beene taken to be of Parliaments, is the number and frequencie of them; For you may see by the commentaries upon *Littleton*, fo. 100. that before the Conquest, and in the Conquerors time, and after till the end of King *Henry* the third his time, there were two hundred eighty Sessions of Parliament; And since almost two hundred.

Dr. and Student. fo. 12.

Another reason, as I conceive, to be collected out of the oath, which the Kings of this Realme take at their Coronation, which is Printed in *Magna Charta*, whereby the King agrees to give consent to such Lawes, as shall be propounded for the profit and good of the Kingdome.

And that I conceive is the cause, that when Bills come up, being agreed by both the Houses; the Kings Majesty, to those he doth not allow, or not like of, doth make no direct deniall, but *Le Roy le avisera*. For nothing

thing can be done without the Kings consent, who hath sole power to call, to prorogue and to dissolve Parliaments at his pleasure. And I know not, whether the last meeting in Parliament, either by ill choice of the members of that House, or by the great increase of the number, or by the ambitious humours of some members of that house, who aimed more at their owne ends, and designs, then the generall good of the Commonwealth; Things were so carried, not as was used in ancient time, but so disasterously, that it hath wrought such a distaste of this course of Parliaments, as we, and all that truly love the Commonwealth have just cause to be sorry for it.

NOW I come to my third head, that is, to *The third* give answer to such precedents as have *part.* beene shewed, and insisted upon, to prove that the Kings of this Realme, have made such impositions, even in the matter of Shipping.

And herein first they have insisted upon a tribute, or imposition called Danegelt, which *The first Precedent.* was begunne in *Etheldreds* time, which as it

was said, was double, *ad placandos Danos, vel ad coercendum Danos*, which was very grievous and of long continuance; For as it was said by my Brother Croke, it was first tenne thousand pounds yearly, then increased to sixteene thousand, then to twenty foure thousand, then to thirty six thousand yearly: And from twelve pence for every hide of Land, to twelve shillings for every hide of land.

This Tribute continued after the Danes, for in the time of the Normans, it became to be called a tallage, or taxe; King Henry the first granted to the Citizens of London to be quit, and free from Danegelt: And the same King about the thirtieth yeare of his raigne, in redemption of his sinne, did grant that *Danicum Tributum* should be totally released for seaven yeares, as it appears in S^r. Henry Spelman's booke intituled *Glossarium*, fol. 200.

Spelman.
fo. 200.

Resp. I.

To this I give this answer, that by the Statute of 34. Edw. I. *De tallagio non concedendo* but by Parliament, this was taken away: And thereupon insues a strong argument, that if such a thing as the Danegelt, which had so long continued, were not taken away by these

these acts of Parliament, it might have beene put in use: For no man will maintaine, that this tribute of Danegelt, can now be imposed at this day by the Kings Writ, under the great Seale, which it might be if these Statutes had not taken it away.

And for this purpose, in the Statutes made 34. Ed. 1. cap. 8. in the foure and thirtieth yeare of King *Edw. 1. cap. 8.* The King grants to Clerkes and Laymen, that they shall have their laws, liberties, and free customes, as they have used the same at any time when they had them best; And if any Statutes have beene made, or any customes brought in by us; or our Ancestors to the contrary, that they shall be void and frustrate for evermore.

And concerning the generality of precedents, which have beene made use of on the one side, and on the other, out of Membrana's, Patents, and Commissions, and answers to petitions in the Rolls of Parliament (to Petitions;) I am very sorry that such obsolete and ancient things, have beene mentioned, many of which, in my judgement, had beene better to have slept in silence, then to have beene spoken of in these times.

But for a generall answer to all such as have beene shewed before, the Statutes *de Tallagio non concedendo*, And the Statute of 14. *Ed. 3.* may be given, And that is that they are of no force being now expresly taken away by the said Statutes; And to such as have been shewed since, some in the time of *Edward* the third, they are but very few, and being directly contrary to the Statute then in force, they are not available to prove the lawfulnessse of this Taxation: besides, King *Edward* the third acknowledged that he had charged his people with great burthens, and desired that they might be forgotten; And that he was urged to it by necessity, and not for any ill end of his owne, as appeared upon the reading thereof in Court.

The commission bearing date the 20. of November An. 27. *Edw. 1.*

And lastly, there were many effectuall precedents shewed, that for imbarging of Ships, and for building of Gallies at Bristow, specially set downe in number, and the content, and so in divers Port Townes: And they are enjoyned, *in fide quamobis tenemini, et sicut honorem nostram diligitis, & ex hereditationem nostram vitare, & sicut nos ipsos indemnos servare volueritis;* herein

herein is a strong command, and as great necessity; And yet there was a Clause in these Commissions, (*viz.*) *Et vestrum quod ad illud posueritis, cum illud sciverimus in exitibus Balivar' allocari faciemus.*

And in 2. Hen. 4. Parliament recites that ^{2 Hen. 4. Num. 22.} where divers Commissions were made to divers Cities, Boroughs, and Towns, to command the making of certaine Barges, and Billingers without the assent of Parliament, and in another manner then had beene done before; The Commons did pray the King, that the said commissions might be repealed, and that they should bee of no force, or effect; And the King answered, that the said commissions should be repealed for ever.

But for the great necessity of such Vessels, for the defence of the Realme in case that the Wars doe come, the King will commune of this matter with the Lords, and after he will shew it to the Comons to have their consent.

And so I leave those precedents, which together with some other Objections, have beene fully answered by my brother Croke, and proceed to my further point.

The fourth
part.

THat is that since the time of *Richard* the second, and *Henry* the fourth, there have beene no such thing attempted, and that this disuse is a sufficient matter to prove the unlawfulnessse; For since that time, though there have beene in the raignes of many Kings, occasion of imployments, both of ships for the defence of the Sea, and service of the Land, yet the course and order of defence hath been by severall other waies: As by commissions to provide men for to serve for wages; And by Indentures of covenants, which were very frequent to be made betweene the Capitaine, and the King, that he should covenant to serve with so many men, for such particular times, and for such wages as were comprised therein, and the precedents of moderne times have beene this way all for wages.

This is proved by an Indenture made in the fifteenth yeare of *Edward* the fourth, and *St. William Pirton* Knight, reciting that the King had disposed of an Army of foure thousand men for the narrow Seas, and the keeping of them; And that he should have
con-

constantly foure hundred sixtie men under him, for foure moneths, The Kings Majesty was to finde the ships furnished with Guns, Powder, Artillery, and Victuall, and that the said *William Pirton*, should take wages for every of his Companie, (*viz.*) two shillings a week, and the times appointed for the payment thereof.

And the eight and twentieth of King *Henry the eight* it appeares, by a letter under the privy Signet then, when by command men were raised in the County of Lancaster, and by command comming towards the county of Lincolne, to aide the suppression of rebells, The rebells having submitted before they came, they were commanded to returne, and for their charges in their entertainment, and conveying of the a reasonable bil should be made, and sent to the King by a trusty messenger, and he would cause a convenient recompence to be delivered accordingly.

And for that which hath beene insisted upon, that there hath beene Commissions of Array, and provision for Armes, and for preparing Armour from time to time; It is
not

not to be denied, That first by severall Statutes, as that of *Winchester* and divers since; The Armour, and Weapons, wherewith the Subjects of this Realme have beene charged, are severall, and changed according to the variety of times, as things have growne out of use; And other manner of provision more serviceable and necessary, for which there have beene directions for views, and for trayning, and disciplining of Souldiers, to be prepared for defence; that this hath beene in use no man can or ever could deny; or affirme the contrary: But the Armes wherewith they were charged were their own proper goods; And in all the Prerogatives which have beene before by M^r. Attorney generall urged, that the King hath interest in mens goods, and to execute his writs by his Sheriffs upon mens persons, and in their lands, for giving possession, and for levying amerciaments, and fines, and power to put some of his Subjects out of their possessions, and to deliver the possession therof to others, as it appeares in *Ploydon* in *Manxells* case which was vouched by M^r. Attorney generall.

This

This is very true, for this is a thing which the King is bound to doe for the good of his Subjects.

For as it is agreed in 34.H.6. fo.14. The Kings Majesty is bound to keepe his Courts of Chancery, and all his other Courts at his own charge; And 39.H.6. fo.40. The King is bound to doe Law and right to all his Subjects; which without these powers and prerogatives could not be performed.

Out of these and the like of murage and pontage, there can no sound argument bee drawne, to warrant this provision of Ships, and men, and furniture for warre, when the King will so appoint.

But I conceive that it hath beene generally agreed by all the Judges (*nullo contradicente*) that if this Writ of 4. *Augusti*, which is for provision of a Ship, and furniture, and men, had beene for to have authorized the Sheriffes to have levied monies of the Subjects for that purpose; That then the Writ could not have given power to have done it, because that would have beene expressely against the Statutes; And if that be granted, then considering
f that

that these Writs to the Sheriffes, are accompanied with instructions, commanding and directing the levying of money, and proportioning what summe is to be raised in every County for that service; As in the County of Yorke, and in the County of the Citie of Yorke, the summe of twelve thousand pounds, and the summe of eight thousand pounds for the County of Lincolne: And for a proportion of money for every County for that purpose: The consequence thereof may be this, that this levy, which hath obtained the name of Ship-money, and wherein no indeavour hath ever beene made for preparing any such Ship, or furniture, or men, as the Writ in it selfe purports, is not pursued, or warranted by this generall levy of ship money: for it is a rule, *Id quod non fieri potest directe, ex obliquo fieri non debet.*

I confesse that divers of the Kings of this Realm, have upon some pretended occasions, taken upon them by perswasion of some Great men in their time, and assumed a Royall and Monarchicall power, to levy monies by Commissions, and have extended that power

power very farre, whereof you may read,
That in the seaventeenth yeare of King ^{17.H.8 Anno}
Henry the eight; Cardinall *Woolſie* was charg- ^{Dom. 1525.}
ed to have beene the cause of directing Com-
missions into all Countries, for the levying of
the sixt part of all mens goods, and the sixt
part of their Plate, for that the King was then
determined to make warre with France, and
to passe the Sea himselfe: This being attemp-
ted by inforcing some, and sending others to
prison, it grew to be so generally misliked,
that the people rose up in divers Countries,
and the King disclaimed that it was done
without his Privy: The Cardinall charged it
to be done, first by the consent of the Coun-
sell; which they denied; then he charged the
Judges to be consenting, which being un-
true, the Cardinall tooke it to himselfe; And
all the Commissions were recalled, you may
see it at large set downe in divers Chronicles:
And in the latter times of our gracious
Queene *Elizabeth*, upon pretence of want, for
expeditions in Ireland, There was a generall
Benevolence required, and it went on for a
time, and so farre as it came to be voluntarily
draw f 2 levied

The attempt to
have a Bene-
volence for
Queene Eli-
zabeth.

levied in the Innes of Court; And I can speake it of my own knowledge, I paid a sum, I think but twenty shillings, & others paid likewise: But not long after (as it was said) when the Queene was informed, that this Benevolence was expressely against the Statute of Richard the third, and against the Laws, and distastfull; All the monies levied ^{were} ~~was~~ commanded to be restored and repaied, and mine was, and the rest was so to others, as I heard, and doe verily believe; and this was attempted by so gracious a Queen.

And to speak nothing of the Commission dated the thirteenth day of *October*, in the second yeare of our gracious Soveraigne Lord the Kings Majesty, for the Loan and levying of the five Subsidies, which was effected, and acknowledged after not to be warranted by the Laws and Statutes: This point is apparent, That in time of necessities these ~~Illegall~~ or Monarchicall Powers have been assumed in the times of other Kings.

And hereupon I conclude these points, That the Statutes have taken away this power of charging the Subjects of this Realme with

with any generall and publique Charge, Aide or Tallages, or burthens for any businesse, but onely by their consent in Parliament, and no Usage, Precedent, or Custome, if any such have been, can by Law take away the force of these Acts of Parliament, so long as they stand in force.

And I doe absolutely beleeeve, that if the Kings Majesty had not been perswaded by some opinions, that this course was warranted by Law, and Custome of the Realme, that he would not have attempted the same.

NOW I proceed to the fifth part; That *The fifth* the matter which is contained in the *part.*

Writ of 4. *Augusti, Anno 11. Car.* doth not contain sufficient matter to warrant this levy.

First, the words of the Writ are not any affirmance directly of any danger, for they are but *Quia datum est nobis intelligi*; this is but of information, and not *ex certa scientia*, which are of more force: The other words are but of information or suggestion.

Then for the matter; It containes onely these points, That there are many Pirats and

Sea-robbers, congregated upon the Sea, to take away some of our Subjects into miserable Captivity, and to hinder our Merchants to bring in their merchandizes and goods, and the goods and Merchandizes of the Subjects of our friends, comming and traffiquing hither; and spoyling of our Merchants: And for that the Sea hath bin, and ought to be defended by *Gentem Anglicanam*, And they intending to trouble the Kingdome;

And we considering the danger every where now imminent, and desiring the defence of the Realme, the safe-gard of the Sea, the security of our Subjects, the safe conducting of the ships of our Merchants, & of their merchandizes, to come into our Realme, and to goe forth of the Realme, and willing to provide for their aid, doe therefore direct this Writ.

Here is no matter of any publique danger to all the Subjects, no intended comming upon the Land, but to robbe and spoile as Pirates by Sea, and conspirators to molest Merchants, to hinder traffique, to take some prisoners, as have bin done heretofore, sometimes

times by the Dunkirks, and many times by the Pirats to Argiers.

All this is but such a defence as doth require but the ordinary defence, to the which the Kings Majesty is solely bound for to see performed, for the ordinary benefits, that he hath of Customes, and Subsidies of Wines, and other profits, besides the Tunnage and Poundage; And the Ships which are provided by the Cinque ports, for which they have many priviledges.

This matter contained in the Writ, by all the particulars, doth not comprize any generall assault or attempt to be made for taking any Townes, as hath beene beforetime.

Another reason to prove that the Writ doth not containe sufficient matter to induce a generall charge (is to be collected,) That this being perceived, it is contained more amply, and laboured to be aided and supplied by the words put into the *Mittimus*, which are of more efficacie; For therein is contained, which is not in the Writ of 4. Augusti: *Quod pro defensione Regni, & tuitione maris; And for that, Salus Regni nostri Anglie & populi nostri periclitabatur*

clitabatur: And the recitall of [*Datum est nobis intelligi*] is omitted, but hereby affirmed positively.

And where my Brother Berkley insisted; That the matter contained in the *Mittimus* was sufficient to supply the Writ of 4. *Augusti*, if it were not so fully expressed as it should have beene.

Thereunto I make this answer, *Quod in initio non valet, tractatu temporis non convalescet*: Besides the date of the Writ of *Mittimus* is the fift of May Anno 13. *Car. Regis*, which is almost two years after the Writ of 4. *Augusti* did issue; And this is a very late supply: And therefore that Case was vouched by my Brother Berkley which was *Dowmans Case* An. 25. & 26. *Eliz.* and reported by my Lord Cooke in his ninth booke, wherein it is adjudged that when a Fine or Recovery is suffered and no uses declared, That an Indenture subsequent declaring that the fine or recovery was to such uses, shall be sufficient in Law, to lead to the uses of those proceeding assurances; Which I agree to be good Law. But that doth not resemble this case, for this must be good

25. & 26. *Eliz.*
Cooke l. 9. f. 1.
in *Dowmans*
Case.

good in the foundation, or no subsequent declaration can make that good which at the first was not. And that I prove by two Cases directly adjudged.

The first is *Vernons Case Anno 14. Eliz.* adjudged and reported by my Lord Coke in his fourth booke upon the Statute of joyntures, Coke li. 4. Vernons case.
 A man intending to make a joynture to his Wife to barre her of her Dower, maketh a Feoffment of his land to the use of himselfe for his life, and then to the use of a friend for his life, and then to the use of his wife for a joynture; Although by successe of time it happeneth that the friend dye in the life of the feoffor, and so the wives estate becomes immediate to begin upon her husbands death, and might have beene a good joynture, if it had beene so made at the first, yet this case is adjudged to be no joynture, for it was not good in the foundation, and that which was defective in the Originall, is not good by any accident subsequent.

And in the Lord *Chenyes Case* reported by my Lord Coke in his fift Booke, fo. 62. in the Coke l. 5. f. 68. le Signior Chenyes case.
 foure and thirtieth year of Queene Elizabeth,

It is resolved upon the Statute of Wills, that the estate contained in a Will in writing, which is the foundation and ground, must be such as is expressed in the written originall Will, and that no averment or subsequent prooffe of intention, or explanation can adde or supply any thing to that Originall.

And as in these cases the originall foundation cannot be supplied by subsequent addition; So the Writ of 4. *Augusti* being the Originall, cannot be supplied by subsequent explanation.

Excep. 2.

Another Exception is, that by the Writ, all the Kings Majesties Subjects are to be rated and taxed to contribution, other then such as have part in the Ship, or else doe serve therein. And hereby the Sheriffe of every County, must either not be taxed or not contribute, for it is inconvenient nor can be done, that every Sheriffe should taxe himselfe.

8.H.6.19.
18.H.3.
9.Eliz.

Next for the Writ of *Certiorare*, that is very unusuall to be directed to two severall Sheriffes being then no Sheriffes, to certifie what taxations they had made upon that Writ,
They

They were then no Officers : but it should either have come by Inquisition, or by the return of the then present Sheriffe, to have certified what his predecessors had done in their times, and not this way which was never before heard of.

And then touching the *Scire facias* it selfe, I The Scire fac. am of opinion that it doth not lie, for many causes :

First, the summe so assessed doth not appertain to the King ; And for the Kings Majesty to have a *Scire facias*, for to inforce him to do or pay that which belongs to another, is not usuall. Reason 1.

Secondly, it is not shewed that any Ship, or provision of men, or munition, was prepared or provided, which is a contempt in the Sheriffe. 2.

Thirdly, the direction by the Writ is to distrain, or to commit to Prison such as shall refuse ; and no other course appointed by the said Writ, for the levying thereof. 3.

Fourthly, the *Scire facias* ought to be awarded out of a Presentment, or Inquisition, whereby the matter may be found, whereby 4.

the King is entituled, or upon some Presentments which concern the Common-wealth, as presentments that a common bridge is in decay, and that either a particular man is bound to repaire it, or that it is in default of the County, or of the inhabitants of such a Hundred; And the like for repaire of highwaies : there I agree as was said by my Brother Trevor, A *Scire facias* is usually awarded out of the Exchequer; But I conceive these prove, that without a presentment or inquisition that no *Scire facias* doth properly lye or ought to be awarded.

And therefore I will conclude this with the Case of 2.*Edw.3. fo.2.* the King by his Writ directed to the Sheriffe of Lancaster, reciting, That where S^r. *Iohn Langton* had delivered divers summes of money to one *Robert* his Companion, to come to the King in aide of his warres in Scotland. And the said *Robert* did not come, but did spoile and take the Goods and Chattels of divers of our Subjects in the said County, and did rob, and spoile, and waist the goods of our Subjects to the Value of two thousand li.

ut

ut accepimus le Roy command to the Sheriffe, *De attach* the body of the said *Robert*, and he was attached, and did appeare: And by his Counsell alledged, that upon this suggestion the King being not otherwise apprised by indictment or otherwise, this suit did not lie for the King, and the parties grieved may have their suits.

And thereupon the Court was advised, and took time to speak with the Chancellor, to see if he had any matter, out of which the said Writ was awarded: And afterwards, because this Writ was grounded upon a suggestion against the Common Law, therefore the said *Robert* was discharged, which is a stronger Case then ours. And for these reasons I conclude this Part, that no *Scire facias* ought to be awarded in this case.

NOW it remains to give answer to that *The sixth part.* which hath been before objected and spoken of onely by Mr Solicitor, that the Judges had before given their opinions to warrant the legality of this charge, and subscribed their names.

First, I doe affirme, and it doth appear by my Argument, that this Case now in question doth not concern nor contradict the matter of the Subscription; for the matter whereunto the Subscription was made, is, That when the good and safety of the Kingdome in generall is concerned, and the whole Kingdome in danger, That then for the defence of the Kingdome from such danger, the King may by Writ impose the provision of Ships with furniture and men.

But if onely there be Pirats and Robbers of the Sea assembled together by Sea to rob, spoile, and take the goods and marchandises that are to be brought into the Kingdome, and safe conducting of the Merchants from spoile, as no other particular thing is alledged in the Writ of 4. *Augusti*, I think it will be granted that this doth not by our opinions inable the King to make such a generall charge upon that occasion.

But if there were an intended Invasi^on, & that known to the Kings Majesty whom it concernes most, and upon such an intention, in such a case of necessity, which is and
may

may be termed a time of such danger, as it may be fit to prepare for defence of the Realme, Then I am of opinion that in such a case, all that hath been said, that *Necessitas est Lex temporis*, and *Salus Reipublicæ est summa lex*, and then *Silent inter arma leges*, might be just causes for that time onely to make a preparation of Ships. And in this case here doth not appeare that there was not any one Ship provided or prepared by any Sheriffe.

The King is the sole owner and Lord of the Sea, and hath power thereof: And as it was agreed in a notable Case that was adjudged in the Exchequer, *Mich.* the fourth yeare of King *Iames*, against one *Bates*, wherein I was then of Councill, the King may lay an Imposition upon forraine commodities to be brought into this Realme, for there was 5. s. laid upon every hundred weight of Currants, over and besides the 2. s. 6. d. for poundage: And *Bates* having notice of this Imposition, brought in a Ship freighted with Currants, & payed the 2. s. 6. d. for poundage, but refused to pay the 5. s. for every hundred weight: And upon information, the Case was

*Mich. 4. Jac.
Bates his case.*

was argued at the Barre, and at the Bench; and it was adjudged, that the Imposition was lawfull, and that the King in his prerogative had *totum dominium maris*, and that all the Ports were the Kings, and that the King had sole power to restraine or forbid the going beyond the sea; the sole appointment into what Countries the Merchants should or might trade, and to appoint into what countries they should not trade. And for these respects, the King was to maintaine the Ports, to provide for the safety of the Merchants, and to cleare and scowre the narrow Seas from Pirats and Robbers, for the doing whereof was added the tonnage and poundage by grant in Parliament.

The Letter requiring answer
was dated 2.
Feb.
The answer
7. Feb.

Lastly, these sudden opinions, when Judges heare no Arguments, are of no such force as to bind them to continue the same opinion: But that when they shall have heard Arguments, and be better informed, they may alter and change, which hath usually happened. Besides, as it is very well knowne, wee were not all of opinion, but the greater number then concurring, the Subscription was
for

for conformity, as sometimes is used in such cases.

Lastly, it hath been objected, that the Defendant by his generall Demurrer hath confessed all the matters to be true which are surmised in the *Scire facias*. *Obj. upon the Def. generall Demurrer.*

To this it is answered, that a Demurrer confesseth the matters of fact which are sufficiently alledged; but such matters in fact as are not sufficiently alledged, those are not confessed, but left to the judgement of the Court. *Resp.*

See these Cases so adjudged and resolved in these Books, *Coke Lib. 4. fo. 43. in Hudsons Case*, matter sufficiently alledged *est confesse*: *Lib. 4. fo. 43. in Hudsons Case.* And according to this it is agreed in *Hindes Case*, in the same Book, *fol. 71.* *Et fol. 71. Hindes Case.*

The very expresse Case is that of *Birton* upon Usury, which was, *Anno 33. & 34. Eliz.* where it is adjudged that a Demurrer confesseth nothing that is insufficiently alledged; as where a matter of usury is alledged, and is not so sufficiently alledged, that it appeares to be Usurie, the Demurrer doth not confesse that to be Usurie, as is pretended.

So likewise in this case, the Demurrer general doth not nor can supply the defect of the matter which should have been comprised in the Writ of 4. *Augusti*. The Demurrer confesseth that there was such a Writ, but doth neither confesse the lawfulness thereof, nor the defect of the insufficient alledging of any matter which should have been contained therein.

And thus with as much brevity and perspicuity as want of memory and other infirmities which attend upon my age would suffer me, and without either preamble or protestation, I conclude with that which my brother *Berkley* used in the beginning of his speech, That the people of this Realme are Subjects, and not slaves; Free-men, and not villeins; and therefore not to be taxed *De alto & basso*, and at will, but according to the Laws of this Kingdome.

And therefore I conclude, that neither for the matter, nor for the manner, this Writ of *Scire facias* brought in this Court of Exchequer, upon the tenour thereof, can be main-

maintained. And therefore in my opinion I advise the Barons to give judgement accordingly for the Defendant.

This is the same which I did deliver in my Argument in the same manner that I did argue.

F I N I S.

maintained. And therefore in my opinion I
advise the Barons to give judgement accord-
ingly for the Defendant.

This is the same which I did deliver in
my Argument in the same manner that I did
argue.

FINIS.



THE CERTIFICATE

OF
SIR JOHN DENHAM, Knight,
One of the Barons of the Exchequer,
concerning SHIP-MONEY.
26. Maii, Anno Do. 1638.

MAY it please your Lordships, I had provided my selfe to have made a short Argument, and to have delivered my Opinion, with the Reasons; but by reason of want of rest this last night, (my old disease being upon me) my sicknesse and weaknesse are greatly increased, insomuch that I cannot attend the businesse as I desire: And if my Opinion be required, it is for the Plaintife.

JO: DENHAM.

Serjeants-Inne in Fleetstreet,
26. Maii, 1638.

*His second Certificate directed to the Lo: Chiefe
Iustice Bramston, 28. Maii, 1638.*

My Lo:
Vnderstanding that some misconstruction was taken by some in the declaration of mine opinion, which I desired your Lordship the last Saturday to deliver in my name; for farther satisfaction therein, although I was most desirous to have passed my Vote in silence in this work of weight, by reason I heard not the last foure Arguments, yet I delivered my opinion for the Plaintife, which I took to be *Hampden*, by reason it appeared by the Record, that hee comming in upon Proceffe; *Queritur se colore premissorum graviter vexari, & hoc minus iuste, &c.* which satisfied me that he was Plaintife. And therefore I now declare my opinion for Mr *Hampden*, who did demur.

JO: DENHAM.

*Deposited in the
28. Maii, 1638.*

I shall onely deliver these two Reasons
for maintaining of my Argument.

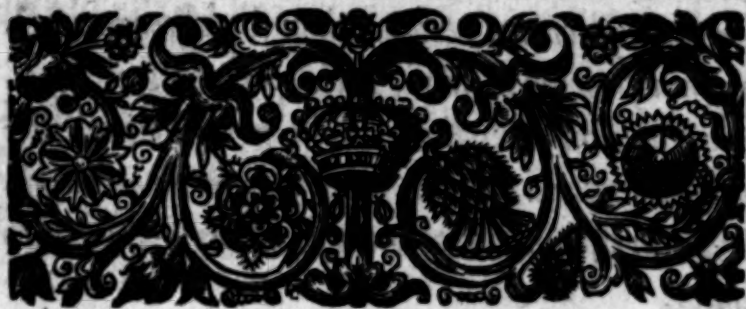
THe first is, That His Majesty is *Sola & suprema Iustitia regni*: And the rule of the Law is, and hath alwayes been, That his Majesty can doe no wrong. And thereupon ariseth another Rule in our Law, (which I give for my second Reason) That the Kings Majesty (being of an incorporate capacity) can neither take any lands or goods from any of his Subjects, but by and upon a Judgement of Record, which according to our daily experience in the Exchequer, there must precede some Judgement in that or some other Court of Record, whereby His Majesty may be entituled either to the Lands, or goods of a Subject: As namely, where seifures of goods of a Subject is made for His Majesty, either upon Outlawries, Attainders, or matters of the like nature, as in Cases of Seifure in the Court of Exchequer, where Seifures are given by the Statute: yet without a Judgement in that Court, upon a tryall for the King, the goods

goods are not to be recovered to the use of
the King, as forfeited.

Upon consideration whereof, and comparing the same with His Majesties Royall Writ, I find no Judgement thereupon had or given, which were the chiefest reasons of my opinion for M^r *Hampden*.

28. Maii, 1638.

F I N I S.



The Argument of Sir George Crooke, Knight,
one of the Judges of the Kings Bench,
upon the case of the *Scire facias* out of the
Exchequer, against *John Hampden*, Esquire,
decimo quarto Aprilis, Anno Domini, 1638.

The Case is this upon the Record,

THe King, by Writ under his
great Seale, dated 4^{to} *Augusti*
anno 11^o of his reigne, directed
to the Sheriffe of the County
of Bucks, and to all the men
of that County, commandeth

them in these words:

Quia datum est nobis intelligi, Quod Prædones
quidam Pirati, ac maris Grassatores, tam nominis
Christiane hostes Mahumetani, quàm alii congre-
gati, Naves, ac bona, ac mercimonia non solum Sub-

The motives
of the Writ,
which are five.

I.

B

ditorum

ditorum nostrorum, verum etiam Subditorum amicorum nostrorum in mari, Quod per gentem Anglicanam ob olim defendi consuevit, nefarie diripientes & spoliantes ad libitum suum; deportare hominesque in eisdem in captivitatem miserrimam mancipantes.

2. Cumq; ipsos conspiciamus navigium indies praeprantes ad Mercatores nostros ulterius molestand', Et ad regnum gravand', nisi citius remedium apponatur, eorumq; conatum virilius obvietur.

3. Consideratis etiam periculis quae undiq; his guer. rinis temporibus imminet; Ita quod Nobis & Subditis nostris defensionem maris & regni omni festinatione qua poterimus accellerare convenit.

4. Nos volentes defensione regni, tuitione maris, securitate Subditorum nostrorum, salva conductione navium & merchandizarian ad regnum nostrum Angliae venientium, & de eodem regno ad partes externas transeuntium (auxiliante Deo) providere; Maxime cum Nos & Progenitores nostri Reges Anglia, Domini maris praedicti, semper haecenus extiter, & plurimum nos lader, si honor iste Regibus nostris temporibus depereat, aut in aliquo minuatur.

5. Eamq; onus istud defensionis quod omnes tangit, per

per omnes debeat supportari, prout per legem & consuetudinem regni Angliæ fieri consuevit.

Vobis præfatis Vicecomitibus, Ballivis, Burgens. Maioribus, probis hominibus, & omnibus aliis quibuscumq; supramencionat' in Burgis, Villis, Villatis, Hamlettis, & locis supradictis, eorumque membris in fide & ligeancia, quibus nobis tenemini, & sicut nos & honorem nostrum diligitis: Necnon sub forisfactur' omnia quæ nobis forisfacere poteritis firmiter injungemus.

The charges in this Writ are three.

Mandamus quòd unam navem de guerra, portagii 450. dolior' cum hominibus, tam magistris peritis, quàm marinariis valentior' & expertis centum & octoginta ad minus, Ac tormentis tam maioribus quàm minoribus, pulvere tormentario, ac hastis, & telis, aliisque armatoriis necessariis pro guerra sufficienti: Et cum duplici Escippamento, necnon victualibus usque ad primum diem Martii tunc proximè sequentem, ad tot homines competen'; & ab inde in viginti & sex septiman' ad custagia vestra tam in victualibus, quàm homin' salariis, & aliis ad guerram necessariis per tempus illud super defensionem maris in obsequio nostro in Comit' custodis maris, cui custodiam maris ante prædict' primum diem Martii committemus, & prout ipse ex parte

The commands of this Writ, which are five.

The end, for
which this ship
is to be prepa-
red.

The clause of
the assessement
for the expen-
ces.

nostra dictaverit moratur parari; Et ad portum de
Portsmouth citra dictum primum diem Martii duci
faciatis. Ita quod sint ibidem eodem die ad ultimum
ad proficiscendū exinde cum navibus nostris, & na-
vibus aliorum fidelium Subditorum nostrorum pro
tutione maris, & defensione vestrum & vestrorum,
repulsioneque, debellationeq; quorumcunque Merca-
torum nostrorum, & alios Subditos & fideles præ-
dictos in Dominia nostra ex causa Mercaturæ se di-
vertentes, vel abinde ad propr' declinantes super
mare gravare, seu molestare satagent: Assignavimus
autem te præfatum Vic' Bucks ad assidendū omnes
homines in villis de Agmundesham, Wendov', &
Marloe magna, & in omnibus aliis Villis, Villatis,
Burgis, Hamlettis, & aliis locis in Com' Bucks, &
terræ tenentes in eisdem navem vel partem navis
prædictæ non habentes, vel in eadem non deservientes,
ad contribuendū expens. erga provisionem præmiss.
necessar.

Et super prædictas Villas, Villatas, Burgos, Ham-
lettas, & locos cum membris eorundem, sic ut præ-
fertur, assidendū & ponendū viz. Quemlibet eorum
super statum suum, & facultates suas, & portiones
super ipsos assessat' per distinctiones, aliosve modos de-
bitos levand' & Collectores in hac parte nominand'

Et constituend', Ac omnes eos quos rebelles et contrarios inveneris in præmissis, in carcere mancipand' in eodem moratur, quousque pro eorum deliberatione ulterius duxerimus ordinand'.

Et ulterius mandamus quòd citra præmiss. diligenter intendatis, et faciatis, et exequamini cum effectu sub periculo incumbente: Nolumus autem, quòd colore prædicti mandati nostri, plus de eisdem hominibus levare faciat, quàm ad præmiss. sufficiat expens. necessar. Et quod quisquam qui pecuniam de contributionibus ad prædict' custag' faciend' levaverit, eam, vel partem inde aliquam penes se detineat, vel ad alios usus, quovis quæsito colore appropriare præsumat, volentes quòd si plus quàm sufficiat collectum fuerit, hoc inter solventes pro rata portionis ipsis contingen' exsolvat'. The purchase of the Writ.

By vertue of this Writ, Master Hampden is assessed to twenty shillings for his lands in Stoke Mandivill in that County, which not being paid, is certified (amongst others) into the Chancery upon a Writ of Certiorari, dated 9. Martii, anno 12. Car. by a Schedule thereunto annexed: And by a Writ of mittimus Teste, 5. Maii, 13. Car. this Writ of quarto Augusti anno 11. Car. and the Writ of Certiorari, and the Sche-

dule annexed is sent unto the Exchequer, with a command there to doe for the levyng of the summes so assessed and unpaid (*Prout de jure, et secundum legem regni nostri Angliæ fuerit faciend.*) Whereupon a *Scire facias* issued out of the Exchequer, reciting the said Writs, to warn Master *Hampden* amongst others, to shew cause why hee should not bee charged with this money: Upon this, he being summoned, appeareth, and demands the hearing of those Writs and Schedule, which being entred, thereupon he demurreth in law.

And whether judgement upon this whole Record be to be given against *John Hampden*, that he is to be charged or no, that is the question: for hee is the onely party in this Case: And there is no cause, why any man should say, that the question is, Whether judgement should bee given for the King, or for the Defendant; for, as this case is, the King is no party to the Record, but onely it is a 'judiciall proceſs out of the Exchequer, grounded upon those former Records for the Defendant, to shew cause why hee should not bee charged, which hath been very elaborately argued by
the

the Defendants Councell (who demurred) that hee should not be charged; and by the Kings Councell very learnedly and elaborately argued, that he should be charged.

This Case is a Case of great weight, and the greatest Case of weight that ever wee reade argued by Judges in this place; and therefore adjourned into this place, for advice of all the Judges: For of the one side it is alledged, that it concerneth the King in his Prerogative and power Royall: And on the other side, that it concerneth all the Kings Subjects in their liberties, their persons, and their estates: For which cause, it hath made some of us to wish and move among our selves, that it might have been (by his Majesties favour) heard and determined in another place by his Majesty, and his great Councell of his Realme: Where all conveniencies and inconveniencies might have been considered of, provided for, and prevented for present and future times, and not to bee argued onely by us, who are accompted his Majesties Councell at law; wherein if any thing be done amisse, the fault must light upon us, as mis-advising the King therein:

therein : But seeing that it hath pleased his Majesty, that the same should be argued and determined in this place, whose pleasure we must obey, I must give my best advice upon my oath to the best of my skill ; wherein, I hope not to trench upon his Highnesse Prerogative , which wee are all bound by our oaths to the best of our skills to maintain, and not to suffer to be diminished ; nor upon his Royall power : but truly to deliver what I conceive the law to bee concerning the Case in question.

Wherein I must confesse, I have been much distracted , having heard so learned Arguments on both sides at the Barre, and so many Records and Presidents cited on either side : But they did not so much move mee ; for the Councell have of either side pressed such reasons and arguments, and cited such Records, as they thought convenient for the maintaining of their opinions ; and perhaps with a prejudicate opinion , as I my selfe, by mine owne experience , when I was at the Barre, have argued confidently : And as I then thought the law to be of that side for whom
I argued ;

I argued; but after, being at the Bench, weighing indifferently all reasons and authorities, have been of a contrary opinion: And so the law hath been adjudged contrary to that opinion, which I first confidently conceived; but that which hath moved mee most, and maketh me most mistrust mine owne judgement in this Case, is, That all my Brothers (who have all argued upon their oaths, and I presume, have seene the Records and Presidents cited on either side) have all argued one way, with whose opinions I should willingly have concurred, if I could have satisfied mine owne judgement with their reasons; but not being satisfied, I have learned, that I must not runne with a multitude against mine owne conscience: for, I must stand or fall unto mine owne Master; and therefore I shall shew mine owne reasons, and leave my selfe to the judgements of my Lords, and others my Brethren: And whatsoever shall be adjudged, I must submit unto; and so doe wish all others; and doe now declare mine opinion to be, That, as this Case is,

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judgement

judgement ought to bee given for the Defendant.

But before I proceed to the Argument, I desire to remove two difficulties: First, that by the Demurrer the danger of the Kingdome is confessed, and so to be a Case of necessity.

To this I answer, that the Demurrer confesseth not matters in fact, but where the matter is legally set down; but if it be not a legall proceeding, then the Demurrer is no confessing of the matter in fact.

This appeares in the Book Case of 5. Hen. 7. fol. 1. and Cook, lib. 5. fol. 69. in Burtons Case, that a Demurrer is no confessing in matters of fact; but where the matter precedent is sufficiently pleaded and laid downe, and so it is holden in all our Bookes.

The second difficulty is, that this Case is so resolved by all our opinions under our hands, That this Writ was legall, which was much pressed by Master Solicitor.

To this I answer, that it is true I have set downe mine opinion under mine hand unto
a case

a Case in February 1636. which is, that when the good and safety of the Kingdome in generall is concerned, and the whole Kingdome in danger, his Majesty may, by Writ under the great Seale of England, command all his Subjects of this Kingdome, at their charges to provide and furnish such number of ships with men, victualls, and munition; and for such time as his Majesty shall thinke fit for the defence and safeguard of the Kingdome from such danger: And that his Majesty may compell the doing thereof (in case of refusall and refractorinesse) and that in such case his Majesty is the sole Judge of the danger, and when, and how the same is to bee prevented and avoided.

To this opinion, I confesse, I then with the rest of the Judges subscribed my hand: But I then dis-assented to that opinion, and then signified mine opinion to bee, that such a charge could not bee laid by any such Writ, but by Parliament; and so absolutely in that point one other did agree with mee, and dissent from that opinion which was after subscribed, and some others in some other particulars

culars from that which was subscribed : But, the greater part seeming to bee absolutely resolved upon that opinion, some of them affirming, that they had seene divers Records and Presidents of such Writs, satisfying them to be of that judgement, I was pressed to subscribe with them: for that the greater opinion must involve the rest, as it was said to bee usuall in Cases of references. And that the lesser number must submit to the opinion of the more, although they varied in opinion; as it is in our Courts, if three Judges agree in opinion against one or two; where there is five Judges, judgement is to be entred *per Curiam*, if the *major* part agree, and the others are to submit unto it.

So in Cases of conference and certificate of their opinions, if the greater part did agree and subscribe, the rest were to submit their opinions : And this (by more ancient Judges then my selfe) was affirmed to bee the continuall practice; and that it was not fit, especially in a Case of this nature so much concerning the service of the King, for some to subscribe, and some to forbear their subscription.

on. And that although wee did subscribe, yet it did not bind any, but that in point of judgement, if the Case came in question judicially before us, we should give our judgements, as wee should see cause, after the hearing of Arguments on both sides, and not to be bound by this sudden resolution.

Hereupon I consented to subscribe; but I then said, in the meane time the King might be mis-informed by our Certificate under our hands, conceiving us all to agree together, and give him this advice under our hands, and not know that there was any that dissented, or was doubtfull: But it was then said, the King should bee truly informed thereof. And thereupon, we that did dissent, did subscribe our hands with such protestations as aforesaid, onely for conformity, although contrary to the opinion I then conceived.

But this being before Arguments heard of either side, or any Presidents seen, I hold that none is bound by that opinion: And if I had been of that opinion as was subscribed, yet now having heard all the Arguments of both sides, and the Reasons of the Kings

Councell to maintain this Writ, and why the Defendant is to bee charged, and the Arguments of the Defendants Councel against the Writ, and their Reasons why the Defendant should not bee charged to pay the mony assessed upon them : And having duly considered of the Records and Presidents cited and shewed unto mee, especially those of the Kings side, I am now of an absolute opinion, that this Writ is illegal, & declare my opinion contrary to that which is subscribed by us all. And if I had been of the same opinion as was subscribed, yet upon better advisement, being absolutely settled in my judgement and conscience, in a contrary opinion I thinke it no shame to declare, that I doe retract that opinion : for, *Humanum est errare*, rather then to argue against mine owne conscience : And therefore now having (as I conceived) removed these difficulties, I proceed to my Argument, and shall shew the Reasons of mine opinion, and leave the same, as I have said, to my Lords and Brethren.

My reasons and grounds that I shall insist upon are these :

That

1. That the command, by this Writ of *4. Augusti*, 11. *Caroli*, to make ships at the charge of the inhabitants of the County (being the ground of this suit, and cause of this charge) is illegall, and contrary to the Common law, not being by authority of Parliament.

2. That if at the Common law it had been doubtfull, yet now this Writ is illegall, being expresly contrary to divers Statutes prohibiting any generall charge to bee laid upon the Commons in generall, without consent in Parliament.

3. That it is not to bee maintained by any Prerogative, or power Royall, nor allegation of necessity or danger.

4. That admitting it were legall, to lay such a charge upon Maritime parts; yet to charge an Inland County, as the County of Bucks is, with making Ships, and furnishing them with Masters, Mariners, and Souldiers at their charge, which are farre remote from the Seas, is illegall, and not warranted by any former President, &c.

5. I shall examine the Presidents and Records cited to warrant this Writ, which have been

all

all the principall grounds of the Arguments to maintaine the same. And I conceive, there is not one President nor Record in any precedent time, that hath beene produced and shewed unto mee, that doth maintaine any Writ to lay such a charge upon any County, Inland, or Maritime.

6. I will examine this particular Writ, and the severall parts thereof, and doe conceive that it is illegall, and not sufficient to ground this charge upon the Defendant.

1. The motives of this Writ are not sufficient to cause such a Writ to be sent.

2. The command of the Writ, to prepare a ship at the charge of the inhabitants with munition and men, is against the Common law, and Statutes.

3. That to lay a charge of finding victuals, and wages of Souldiers and Mariners, is illegall, and contrary to the Common law, and divers Statutes.

4. The power of assessment given to the Sheriffe alone, and to distraine for this, is illegall, and not warranted by any President.

5. The power of imprisoning is illegall, and
contrary

contrary to divers Statutes, and not warranted by the Presidents.

That the perclose of the Writ, & the practice of it is contrary to it self, and *oppositū in objecto*. 6.

If this Writ were legall, yet the manner of assessment by the Sheriffe, as it is certified, is not warranted by the Writ: So consequently this summe cannot bee demanded of the Defendant by vertue of this Writ. 7.

That the *Certiorari*, and *Scire facias*, issued not out legally; and so consequently no judgement can bee given against the Defendant thereupon. 8.

For the first point, that this Writ of 4. *Augusti*, 11. *Car.* is against the Common law, my Reasons are these:

Because, that this is the first Writ, since the Conquest, that went to any Inland County, to prepare a ship with men and munition, for ought appeareth by any Record that hath been shewed; and where there was never any President before, by the rule of Master Littleton, fol. 23. the Law is not conceived to beare any such Writ. And Sir Edward Coke, in his Commentary upon Littleton, fol. 81. saith, 1.

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that

that where there is no example, it is a great intendment, that the law will not beare it.

So I conceive here, there never having bin a President before of any such Writ to the Sheriffe and Inhabitants of a County, to prepare a ship with men and munition, upon any occasion whatsoever, that it is against the Common law to award such Writs.

2. For that the common law of England setteth a freedome in the Subjects, in respect of their persons, and giveth them a true property in their goods and estates, so that without their consent (that is, their actuall consent, or implicate, by a common ordinance, which they consented unto by a common assent in Parliament) it cannot bee taken from them, nor their estate charged: And for this purpose, the law distinguisheth between bondmen, whose estates are at their Lords will and disposition, and freemen, whose property none may invade, charge, nor take away, but by their owne free consent: But here in this Case is a charge laid upon the Subjects, without their consent, and therefore not warranted by law, which is proved

proved by these authorities:

Coke in his Reports, lib. 8. fol. 92. in *Francis Case*, setteth downe this Rule, *Quod nostrum est, sine facto seu defectu nostro amitti, seu in alienum transferri non potest.*

Master Lambert, fol. 24. setting downe the lawes of England, which were confirmed by William the Conqueror, hath these words: *Inter alia, volumus & concedimus, quod omnes liberi homines Monarchia Regni sui prædicti, habeant & teneant terras suas bene & in pace liberas ab omni exactione injusta, & ab omni Tallagio* (not mentioning there *injusta*) *Ita quòd nihil ab eis exigatur præter servitium justè debitum*: Hereby it appears, there is an absolute freedome from all Tallage. 17. King John in *Matt. Paris*, fol. 246. The King doth grant and confirme unto his Barons and Commons *inter alia*, these liberties following: *Nullum Scutagium vel auxilium ponamus in Regno nostro, nisi per Commune Concilium Regni nostri, nisi ad redimendum corpus nostrum, filium nostrum primogenitum nostrum faciend', vel ad primogenitam filiam nostram maritand'*. By this it appears, what was then conceived to be, amongst others, their liberties, and then confirmed,

firmed, which was, that no aide should be put upon them, but by Parliament; for the Parliament was then called *Commune Concilium*.

That the law is so, appeareth by the Treatise written by *Fortescue*, who had been chiefe Justice of England, and then Chancellour of England in King *Henry* the sixth his time, when he wrote the booke intituled, *De laudibus Legum Angliae*: For, fol. 25. cap. 9. hee saith thus, That the King of England cannot alter nor change the Lawes of England at his pleasure.

For, *principatu non Regali, sed et politico ipse populo suo dominatur*: If his power were Royall onely, then hee might change the Lawes, *Tallagia quoque & cetera onera eis imponere, ipsis inconsultis*; but addes, That the King of England *sine Subditorum assensu Leges mutare non potest, nec subiectum populum remitentem onerare impositionibus peregrinis*: And in his 13. chap. fol. 31. hee compares the King and Subjects of England to the head and body naturall, *Ut non potest caput corporis Physici nervos suos commutare, neque membris suis proprias vires, & propria sanguinis*

guinis alimenta denegare : sic nec Rex, qui caput corporis politici est, mutare potest Leges corporis illius, nec ejusdem populi substantias proprias subtrahere reclamantibus eis, aut invitis : Thus hee in this place ; but in fol. 84. cap. 36. hee seemes to say, In hoc individuo Rex Anglia nec per se, nec ministros suos, tallagia, subsidia, aut quævis onera alia imponit Legiis suis, aut Leges eorum mutat, aut nova condit, sine concessione vel assensu totius Regni sui in Parlamento suo expresso : which words seeme so generall, that in no case he may doe it.

So it appeareth by the Booke case, 13. H. 4. fol. 14. that the grant of the King which tendeth to the charge and prejudice of his people in generall, is not good, unlesse by Parliament : But it is agreed there, that grants of Tolls, of Faires, of Pontage, of Pikage, Murage, Ferrying, or such like, which are for the profit, good, and ease of them that will take benefit thereof, and not compulsory to any to pay, but to them that will take the benefit of such Faires, &c. and being very small and reasonable summes, the Law doth give allowance unto them : but if they were great summes, that tend to the charge of the people,

ple, the Law will judge them void.

This appears in Sir *Edw. Cokes Reports*, lib. 5. fol. 63. in the Case of the Chamberlain of London, That an ordinance made by the Cōmon Councell of London, where they have a custome by the said Cōmon Councell, to make reasonable ordinances to bind all within the City concerning Clothes to bee brought to Blackwell Hall, there alwaies to be viewed, & measured, & searched before they were sold, & a penny appointed for the Officer that did that service; That such a charge was reasonable, for that it was for the publick benefit of the City and Common-wealth: And a pecuniary penalty laid for not performance of that ordinance was allowed. *Ibid.* fol. 64. in *Clarks Case* is resolved, That an ordinance made by the assent of the Plaintiffe himselfe, and other Burgeses for the Towne of Saint Albons, of a small taxe upon the inhabitants of the Town, towards the erection of the Courts, & other necessities for the Terme to bee kept there, it was allowed to bee good, and did bind the Plaintiffe, being by the Plaintiffes own consent, and for the publick good of the Town. Also

Also Coke, lib. 11. fol. 86. in *Darcies Case*, citeth this out of *Fitzherberts natur. brev. fol. 122.* That every grant of the King hath this condition in it, tacite or expresse, *Quòd patria per donationes illas magis solito non oneretur, seu grave-*
tur.

And as by grant the King cannot charge his people, so neither can hee by Writ lay any charge upon his people, but by their consent, or where they have apparent benefit thereby: And that is the reason of the Writ in the Register, fol. 127. *Fitzh. nat. brev. fol. 113.* where, by breach of the Sea walls, any inundation is of the Country, the King, who is *Pater patrie*, and taketh care for the good and safety of his people, sendeth out his Commissioners to enquire by whose default any such breach happened, and to cause all that had lands and commons neere adjoyning, which may have benefit of inclosed marshes, or losse by such inundation, to be contributory to the making up of the Sea walls; and this is done by a Jury: But this charge cannot bee laid upon a County or Towne in generall, but particular men that have benefit or losse, or may have
losse

losse or benefit thereby : And this is done upon inquiry of a Jury before the Sheriffe or Commissioners appointed.

So it is at this day upon the Commission of Sewers, as appeareth by *Coke, lib. 10. fol. 142.* in the Case of the Isle of Ely, That the Taxation by the Commissioners of Sewers must bee upon every particular man that hath or may have losse or benefit by such inundations, and making up the walls, and cannot be laid upon any remote parts, which are out of the levell of such losse or benefit : And it must be certaine and particular upon persons certaine, by reason of land or profit, and cannot bee laid in generall ; but in these Cases there is a particular losse or benefit, and in particular places, & but in petty charges ; & then where the Law alloweth that which in reason is to be done, that may be done, without a speciall Statute ; for, *De minimis non curat Lex* : but in this case there is a generall charge through the Kingdome, which the Law doth not permit without common consent in Parliament.

object.

But it hath been alledged, that this charge hath been imposed for the provision of the publick

publick safety and defence of the Kingdome;
And may not this bee done, when every one
hath advantage by it?

To this I say, When eminent danger and *Sol.*
cause of defence is, there must bee defence
made by every man (when the King shall
command) with his person; and in such a
case every man, as it is said in the Presidents,
is bound *per se & sua* to defend the King-
dome: And I thinke no man will bee so un-
wise, but that he will *exponere se & sua* for the
defence of the Kingdome, when there is dan-
ger; for otherwise hee is in danger to lose *se*
& *sua*: But to lay a charge in generall upon a
Kingdome, either for making or preparing of
ships, or money in lieu thereof, is not to bee
done but by Parliament, when the charge is
to be borne in generall of all the Subjects.

To prove further, that no man may have
his goods taken from him but by his consent,
appeareth by a Record in *Mich. 14. Edw. 2.*
Rot. 60. in the Kings Bench in a Writ of er-
rour, brought upon a Judgement given in
Durham, where, in an action of trespassse by
William Heyborne against *William Keylow*, for
entring

entring his house, and breaking his Chest, and taking away 70 pounds in money, the Defendant pleading not guilty, the Jury found a speciall verdict, That the Scots having entred the Bishoprick with an Army into Durham, and making great burning and spoiles, the Comminalty of Durham met together at Durham, whereof the Plaintiffe was one, and agreed to send some to compound with them for mony to depart, and were all sworn to performe what composition should bee made, and to performe what ordinance they should make in that behalfe: And thereupon they compounded with the Scots for 1600. Markes. But because that was to bee paid immediately, they all consented, that *William Keylow* the Defendant, and others, should goe into every mans house to search what ready money was there, and to take it for the making of that summe, and that it should bee repaid by the Comminalty of Durham: And thereupon the Defendant did enter into the Plaintiffes house, and did breake open the Chest, and tooke the 70. pounds, which was paid accordingly towards that fine. The
gaining E Jury

Jury were demanded whether the Plaintiffe was present, and did consent to the taking of the money; they said, No: Whereupon the Plaintiffe had judgement to recover the said 70. pounds, & dammages; for that otherwise hee had no remedy for his money so taken, and the Defendant committed in execution for the same: And thereupon the Defendant *Keylow* brought a Writ of errour in the Kings Bench, and assigned his errours in point of judgement, and there the judgement was reversed:

Because the Plaintiffe *Heyborne* had his sufficient remedy against the Comminalty of Durham for his money. 1.

Because hee himselfe had agreed to this ordinance, and was sworn to performe it; and that the Defendant did nothing but that hee assented unto by his oath: and therefore is accompted to do nothing but by his consent, and as a servant unto him; therefore hee was no trespasser: And therefore the judgement given in Durham was reversed, because hee had assented to that ordinance; though hee was afterwards unwilling, yet having once 2.

consented, his goods were lawfully taken : By which it appeareth , that if hee had not particularly consented , such an ordinance could not have been good to bind him , although this was in a case of great danger, and for defence.

2. *R. 2. pars 1^a.* the Parliament Roll proved this directly: although it be no Act of Parliament, yet the Record is much to be regarded ; for it sheweth what the Law was then conceived to be : For, *Scroope* the Lord Chancellor then shewed to all the Lords and Commons assembled in Parliament , that all the Lords and Sages had met together since the last Parliament, and having considered of the great danger the Kingdome was in, and how money might be raised in a case of eminent danger, which could not stay the delay of a Parliament, and the Kings Coffers had not sufficient therein ; the Record is, That they all agreed, that money sufficient could not bee had without laying a charge upon the Comminalty ; which (say they) cannot bee done without a Parliament : And the Lords themselves for the time did supply the said necessity

sity with mony they lent: which Record proved directly, that this charge, without an Act of Parliament, is illegall.

So upon this reason I conclude, That this Writ compulsarily to charge the Subjects against their wills, is not warranted by any Bookes, and therefore illegall.

If this Writ should bee allowed, great inconveniences would ensue, which the Law alwaies will avoid, and not permit any inconveniences. 3.

That if such a charge may be laid upon the Counties by Writ, without assent of Parliament, then no man knoweth what his charge may bee; for they may bee charged as often as the King pleaseth, and with making as many ships, and of what burthen, and with what charge of munition, victualls, and men, as shall be set downe: Wherein I doubt not, but if the Law were so, the King, being a very pious and just King, would use his power very moderately; but Judges in their judgements are not to looke to present times, but to all future times, what may follow upon their judgements. 1.

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That

That this inconvenience may bee, it appeares by the Dane-geld, first appointed in time of necessity to redeeme them from the cruelty of the Danes, which often changed, and still increased: for in *Anno Dan.* 991. when it began, it was 10000. pounds, *Anno Domini* 994. it was increased to 16000. pounds; and *Anno Domini* 1002. it was increased to 24000. pounds; and *Anno Domini* 1007. it was increased to 36000. pounds; and *Anno Domini* 1012. it was increased to 48000. pounds: So if this Writ bee well awarded, it may bee at pleasure what bounds it shall have.

Also there were never but one single Subsidy, and two Fifteenes used to be granted in Parliament, untill 31. *Elis.* and then a double Subsidy and foure Fifteenes were granted, Sir *Walter Mildmay* then Chancellour of the Exchequer moving for it, and saying, his heart did quake to move it, nor knowing the inconveniences that should grow upon it; but shewed great reasons for so moving of it, being immediatly after the Spanish invasion: & so it was granted. Afterwards in 35. *Elis.* treble Subsidies, and sixe Fifteenes were granted:
and

and in 43. *Elif.* foure Subsidies and eight Fifteenes ; and yet these were not accompted grievous, neither would it have been, if it had been 10. Subsidies, because in Parliament, and convenient times and meanes appointed for the levying of them.

Tonnage and Poundage were granted to this end, 13. *R. 2.* (and have continued ever since by severall grants) that the King might have monies in his purse against time of need for extraordinary occasions ; especially for the defence of the Realme, and for guarding the Seas, as it is especially declared by the Statute of 1. *Jac.* and former Statutes.

But it is said, that Tonnage and Poundage *object.* is not granted now to the King ; Therefore the King is inforced to take these extraordinary courses.

Though it be not granted, yet I thinke it is *Sol.* taken ; and I doubt not but to the same intent, and for the same purpose for which it was first granted, which was for the defence of the Kingdome, and the guard of the Seas.

Therefore in case of danger and necessity, every Subject, for defence of the Kingdome, is

is bound *Ligeancie debito*, as some Records say; and *Ligeancie sue vinculo astricti*, as others speake: *Se & sua totis viribus et potestate expone-
re, &c.* And in such a case the King may com-
mand the persons of his Subjects, and arrest
their ships to wait on his, to defend the Sea;
Yet this also (when they goe out of their
Counties) at the Kings charges; But to com-
mand the Subjects by Writ to build new
ships, or to prepare ships at their charges, or
to lay a common charge on the Subjects in
generall, for matter of defence or avoidance of
danger, is not warrantable by the Common
Law.

20 Another inconvenience is, That it is left in
the power of the Sheriffe to charge any mans
estate at his pleasure, taxing some, and sparing
others, as his affection leadeth him. And
sometimes by colour thereof, levying more
then he need, and enriching himselfe; which
power the Law never alloweth him, although
it were in lesse matters; as to make an assesse-
ment for the breach of the Sea walls, but to
doe it by a Jury, and not himselfe alone.

So for these reasons I conclude this Writ is
against

against the Common law, and so illegall.

For the second point, I conceive, if the 2.
Common law were doubtfull in this, whether such a charge might be imposed by Writ, yet now it is made cleare by divers expresse Statutes, that the King is not to lay any charge upon his Subjects, but by their consent in Parliament: and that is by many Acts of Parliament in force, and not repealed. And there is no doubt but the Kings by Statute may bind them and their Successours not to lay any such charge, every King being bound by oath to performe the Statutes of his Realme.

The Statute of 25. Edw. I. which is in these 25. Edw. I.
words:

Forasmuch as divers people of our Realm are in feare, that the aides and taxes which they have given us before time towards our warres and other businesse of their owne grant and good will (howsoever they were made) might turne to a bondage to them and their heires, because they might be at another time found in the Rolls; and likewise for the prizes taken throughout our Realme by our
H F ministers,

ministers, wee have granted for us and our
 heires, that we shall not draw any such aides,
 taxes, or prizes into a custome for any thing
 that hath been done heretofore by any Roll,
 or any other President that may be found.

Ibid. cap. 6.

Ibidem, cap. 6. Moreover, wee have granted
 for us and our heires, as well to Archbishops,
 Bishops, Abbots, Priors, and other folke of
 holy Church, as also to Earles, Barons, and to
 all the Comminalty of the land, that for no
 businesse from henceforth we shall take such
 aides, taxes, nor prizes, but by the common
 assent of the Realme, and for the common
 profit thereof, saving the ancient aides and
 prizes due and accustomed. Which are the ex-
 presse words of that Statute.

Now what those ancient aides were, is
 well knowne, viz. that they were *ad redimen-*
duo corporis, ad filium primogenitum, militem faci-
endū, Et ad filiam primogenitam maritandam; which
 aides concerne not the Subjects in generall,
 but particular men were liable thereunto by
 their covenants: for this saving needed not to have
 been, for the body of the Act extended not to
 them, but to generall aides of the Kingdome.

ministers

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However

However, if this *Salvo*, as it hath beene objected, would preserve this aide now in question; yet the Statute made afterwards de *Tallagio non concedendo*, being without any *Salvo*, takes it away: which Statute *Rapall* in his Abridgement, fol. 441. in his title of Taxes, abridgeth in this manner:

Anno 27. Edm. 1. It is ordained, That the taxes taken shall not be taken in custome, nor burd by the assent of this Realm, except the ancient aides and taxes.

And there the taxes of Wooll of forty Shillings a sacke is released.

Ibidem 2°. That no tallage by us or our heires in our Realm be put or levied, without the assent of the Archbishops, Bishops, Earles, Barons, Knights, Burgeses, and other free Commons of our Realm, That nothing bee taken from henceforth in the name, or by reason of *Male tout* of a sacke of Wooll, *Statutum de Tallagio non concedendo*.

Master Sollicitor laboured much to prove, *Object.* that there was no such Statute de *Tallagio non concedendo*.

First, for that it is not to be found in the Rolls of Parliament.

Secondly, for that it is not set down when it was made.

Thirdly, that it was but an abstract out of *Confirmatio Chartæ libertatum*.

Master Attorney said, hee would not deny it to be a Statute, neither would he affirme it; but yet it did not extend to take away the aide demanded by Prerogative, or power Royall, for defence of the Kingdome.

sol. To this I answer, That it was never doubted to be a Statute, untill this Argument; and that it is a Statute, appeareth,

1. For that it is printed in the booke of Statutes as a Statute.

2. It is recited in the petition of right, *anno tertio Car.* to be a Statute.

3. To that, that it is not found in the Rolls, I answer, That many Statutes which are knowne Statutes, are not found in the Rolls, as *Magna Charta* is not.

And as touching the time, I conceive it to be made in 34. *Edw. 1. cap. 1.* for so it is set down

in

in the great printed book of Statutes *anno* 1618.
to bee the first chapter of the Statutes therein
made, *viz.* in these words :

No tallage or aide shall be taken or levied
by us or our heires in our Realme, without
the good will and assent of Archbishops, Bi-
shops, Earles, Barons, Knights, Burgeesses, and
other Freemen of the land.

And that it is a Statute, all my brethren the
Judges have agreed.

The onely doubt then is, Whether this Sta-
tute extendeth to aides for defence of the
Kingdome : which I thinke it doth ; for it is
the precise words, That no tallage or aide
shall bee taken or levied, but by consent in
Parliament: which extendeth to all manner of
aides.

Bodin saith, *fol.* 97. by a Law made in the
time of *Edw.* 1. that it was provided and ena-
cted, That no tax, tallage, nor aide shall bee
imposed, but by grant in Parliament ; and by
this Law the Subjects of England have de-
fended themselves ever since, as with a buc-
kler : whereby it appeareth, that notice was
taken of this Law in forraine parts, and so

*Bod. fol. 97.
Edw. 1.*

held still to be a Statute in force.

14. Ed. 3. ca. 1.

The next Statute is 14. Edw. 3. cap. 1. which reciteth the grant of the great Subsidy of the ninth fleece of the ninth Lamb, &c. (formerly granted) and thereupon these words follow:

Wee, willing to provide for the indemnity of the said Prelates, Earles, Barons, and other the Comminalty of the Realme; and also of the Citizens, Burgeses, and Merchants aforesaid, will and grant for us and our heires, to the same Prelates, Earles, Barons and Commons, Citizens, Burgeses and Merchants, that the same grant shall not bee had forth in example; nor fall to their prejudice in time to come: Nor that they bee from henceforth charged nor grieved to make any aide; nor sustaine charge, if it bee not by the common assent of the said Prelates, Earles, Barons, and other great men, and Commons of the said Realme of England, and that in the Parliament: And that all the profits arising of the said aide, and of Wards marriages, Customes, and Escheats, and other profits arising of our said Realme of England, shall be

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set

set & dispended upon the maintenance of the
safeguard of this Realme of England, and of
our warres of Scotland, France, and Gascoin,
and in no place elsewyhere during our said
warres.

By this statute it appeareth, that it is ex-
pressly provided, That the subjects should not
be from thenceforth charged nor grieved to
make any aide, nor sustaine any charge, but
by common assent, and that in Parliament;
which is as expresse as may be, and exclusive
to any charge otherwyse; which I conceive
was made against the appointment of ma-
king, or preparing, and sending of ships at the
charges of the Townes whence they were, or
sending men out of their Counties at the
charges of the County.

Now, where it is alledged by my brother
Weston, and my brother Berkley, that this was
but a temporary statute, and ended when his
warres ended, which appeareth by the last
clause, for employment of those profits of his
Wards, &c. towards those warres: I conceive
it appeareth to bee an absolute and perpetuall
statute; for, it is granted for him and his
heires,

heires, which is in perpetuity : And also it appears by *Plowd.* his *Cómentaries*, fol. 457. in *Sir Thomas Wroth's Case*, where a grant is by the name of the King, which is in his politticke capacity ; this extended against him, his heires and successours, although they bee not named.

Also the intendment of this Law appeareth to bee for the security of the subjects from thenceforth for all future ages ; and then the office of Judges is, as appears by *Sir Edward Cokes Reports*, lib. 3. fol. 7. and *Plowdens Commentaries* in *Byston and Studs Case*, to construe statutes according to the true intent of the makers thereof, which was in this Case, That it should bee a perpetuall security for them : and to little purpose it had been to make a statute to continue but during the time of the warrs.

ob. Also where it is alledged, that the statute of 14. *Edw. 3.* is not mentioned in the Petition of right, which is some Argument that it was not conceived to be a continuing statute.

Sol. To that I answer, that in that Petition of right it is said, That by the statutes there recited,

ted, and other the good Statutes of this Realme, the Subjects shall not be compelled to contribute to any Taxe, Tallage, Aide, nor other like charge not set by Parliament, in which this Statute is as well intended, as other Statutes, and as farre, as if it had beene expressly recited.

Also it appeareth by all the bookes of Statutes, that this Statute is printed as a Statute continuing, whereas others expired, are so set downe as expired.

21. *Edw. 3. pars 2. m. 11.* A Subsidy being granted by Parliament, viz. forty shillings of every sacke of Wooll transported before Michaelmas following; and six pence of every twenty shillings of merchandize, for the safe guarding of the Merchants, defence of the Coasts, &c.

21. *Edw. 3. p. 2. m. 11.*

After Michaelmas, viz. 31. Octob. 21. *Edw. 3.* by Writ the Collectors were commanded to continue the collection of those Subsidies untill Easter. But 26. Novemb. 21. *Edw. 3.* the King by Writ commanded the stay of the collection of the six pence in the 20. shillings, and to continue the collection of the Sub-

sidies upon the sackes of Wooll untill Easter.

22.Ed.3.m.16.

22.Edw.3. Parliament, *mem.16.* the Parliament being holden in Lent, the Commons complained of this continuance of the collection of the Subsidy upon the sacks of Wooll longer then the Parliament had granted it; and provided, that it should not be continued longer then Easter by the procurement of no person.

By this it appeareth, that the Parliament being carefull, that the time for levying of a Subsidy granted, should not bee enlarged by any power, much lesse would they admit of a Writ, to lay a charge without grant by Parliament.

25.Ed.3.m.8.

25.Edw.3.m.8. it was enacted, That no man should bee compelled to find men at armes, other then such as hold by such services, except it be by common assent in Parliament.

By this it appeareth, that if men bee not compellable to find a man at armes, unlesse it bee by common assent in Parliament, much lesse is any bound to bee contributory to the preparing of a ship with 180. men at armes, and victuals, and wages of the souldiers for a time,

time, unlesse it be by common assent in Parliament.

Rot. Parliamenti, 2. Hen. 4. nu. 22. (an Act of Parliament, as I account in the very point) is in these words : For that of late divers Commissions were made to divers Cities and Burroughs within the Realme, to make Barges and Barringers, without assent in Parliament, and otherwise then hath beene done before these houres ; The Commons do pray the King, that those Commissions may bee repealed, and that they may not bee of any force or effect, to which it is answered : That the King willeth, that the said Commissions be repealed in all points, which is an absolute and perfect Statute ; but then there is added these words : But for the great necessity that hee hath of such vessels for defence of the Realme, in case that the warres shall happen, hee will treat with his Lords of this matter, and afterwards will shew it unto the Commons, to have their counsell and advice in this point : So by this Record it appeareth, that the Commons did conceive, That no Cities, Burroughes, nor Townes, without assent

in Parliament, were to bee charged with the making of such vessels, to which the King agreeth : And from that day to this very day, (untill the making of these Writs) in no age (although the Kingdome hath beene many times in danger of invasión, and hath beene invaded) there doe appeare any Records that ever I have scene, or any Writs directed to any Townes or Cities, at their charges to make or prepare any ships or vessels whatsoever.

ob. And whereas it hath beene objected, and especially insisted upon by my brother *Berkley*, That this latter part (that the King will treat with his Lords concerning them, and after conferre with the Commons) is a gentle deniall of that Act, as the experience is at this day : *Roy se aviserá*, is a deniall of an Act.

sol. Hereunto I answer, That it is an absolute Act; for it is an absolute assent unto the Petition, and that which came after, was but a plausible excuse; for that such Commissions had gone out, and this further consultation never appeared to be made, nor ever any such Writ or Commission for such vessels to bee made,

made, went out ever since untill this Writ.

13. Hen. 4. nu. 10. A grant is of a Subsidy of 13. H. 4. nu. 10.
 Woolls, Woolfels, Hides, and other things
 there mentioned, and of Tonnage and Poundage for one yeare, for the defence of the
 Marches of Callice, &c. and for the defence of
 the Realme, and safeguard of the Sea: And
 therein is this expresse proviso, viz. Provided
 alwaies, that this grant of a Subsidy of Woolls,
 &c. and of Tonnage and Poundage in time
 to come, shall not bee taken in example, to
 charge the Lords or Commons of this
 Realme with any manner of Subsidy, for the
 safeguard of Callice, &c. nor for the defence of
 the Realme, nor for the safeguard of the Seas,
 unlesse it bee by the wills of the Lords and
 Commons of this Realme; and that by a
 new grant to be made, and that in full Parlia-
 ment to come. By this it appeareth, that it
 was then provided, That no charge should be
 laid upon the Lords or Commons, no nor
 for the defence of the Realme, but by grant in
 full Parliament.

13. Hen. 4. nu. 43. A Petition was in Parlia- 13. H. 4. nu. 33.
 ment, reciting, that there was an office gran-

ted of *Alnager* within London, and the Suburbs of the same, with fees to that appertaining, where any such office never was, nor any such fees appertaining thereunto; and that by colour thereof they levie upon the sale of every Broad cloth, an halfe penny of the buyer, and an halfe penny of the seller; and upon sale of every hundred Ells of Canvas, a penny of the seller, and a penny of the buyer, wrongfully against the Statute in the time of your Highnesse Progenitors made to the contrary; by which it is ordained, That no tallage nor aide shall bee granted nor levied, without assent and consent of the Lords and Commons of your Realme, as by the said Statute fully is declared: Wherefore they pray, that such Letters Patents thereof made shall bee void, and holden for none: And this was granted; whereby it appeareth, that it is declared then in Parliament, that these Statutes were and did continue, that no tallage or aide shall bee levied without grant in Parliament.

1. Ric. 3. cap. 2. It is enacted in these words: Our Sovereigne Lord the King remembering how the Commons of this Realme by new
and

and unlawfull inventions, and inordinate covetice against the Lawes of this Realme, have beene put to great servitude, and importune charges and exactions; and especially by a new imposition, called a *Benevolence*, whereby divers Subjects of this land against their wills and liberties have paid great summes of money, &c.

It is enacted and ordained, That the Subjects and Commons of this Realme from henceforth shall in no wise bee charged by such charges or imposition, called a *Benevolence*, or by such like charge: and that such exactions, called a *Benevolence*, before that time taken, shall be taken for no example, to make any such, or any like charge of any his Subjects of this Realme hereafter; but shall bee damned and adnulled for ever.

By this it appeareth, that it is expressly provided, That the Subjects shall not be charged by way of *Benevolence*, which is in nature of a free gift, nor such like charge, that is, no charge of monie shall bee upon the Subject for any pretence whatsoever, be it for defence in time of danger, or the guarding of the Seas.

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The last and concluding statute is the Petition of right, made in the third yeare of his Majesties raigne, where reciting, that it was enacted by a statute made in the time of Edward the first, commonly called, *Statutum de Tallagio non concedendo*, that no tallage or aide shal be laid or levied by the King or his heires in this Realme, without the good will and assent of the Archbishops, Bishops, Earles, Barons, Knights, and other the Freemen of the Comminalty of this Realme: And by a statute of 25 *Edw. 3.* That none shall be compelled to make any loanes to the King, because such loanes were against reason, and the franchise of the land: And by another statute, That none shall be charged by any impositions, called a *Benevolence*: By which statutes, and other the statutes of this Realme, your Subjects have inherited this freedome, That they shall not bee compelled to contribute to any taxe, tallage, aide, nor other like charge not set by Parliament: And then they pray, that none hereafter bee compelled to make or yeeld any gift, loane, benevolence, taxe, or such like charge, without common consent by Act of Parliament.

And

And after five other things there mentioned, the conclusion is, All which they pray as their rights and liberties: unto which the King answers, Let right bee done, as is desired, which is a full and perfect statute, shewing in this point the liberties of the Kingdome prayed and allowed, which was not done without the advice of the Judges then being, whereof I was one; whose opinions were then demanded, and resolved, that the same did not give any new liberty, but declared what the liberty of the subject was in this amongst others, that they should not bee compelled to be contributory to any tax, tallage, aide, nor any like charge not set by Parliament.

By reason of all which statutes, especially of those of 25. *Edw.* 1. 34. *Edw.* 1. and 14. *Edw.* 3. being in the negative and in force, I conceive that those Writs, to lay such a charge, is against the Law, and so the assessment by colour thereof not lawfull.

Now, whereas the precedent Arguments *object.* have been, that the Kingdome being in danger, therefore these Writs went forth for the

making of ships, because there could not bee so suddenly any Parliament called: And the Parliament is a slow body; and the Kingdome may be lost, whilst there is consultation: And the danger is conceived to bee very great, because the first Writ of 4. *Augusti* so mentioneth, that the Pirates provide a great Navie to infest the Kingdome, and it is fit with speed to provide a remedy; and that the Writ of *mittimus* mentioneth, that *Salus Reipublice periclitabatur*: And wee must beleeeve these suggestions to bee true; for the Kings Certificate by this Writ is, *Recordum superlativum*, as Master Sollicitor and my brother Berkley termed it; and we must leave it upon the Kings conscience (if it be not true) to lay such a charge upon an untrue suggestion: and the Defendant also by his Demurrer hath confessed all the suggestions in the Writ to be true; therefore it must bee conceived, that the Kingdome was in great danger, and present remedy must be had by making these ships, and may be commanded by those Writs, and not to stay for a Parliament: And my brother Crawley said, It may bee, that if a Parliament
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were

were called, they will not yeeld to the going forth of such Writs, although the Kingdome were never so much in danger : And this charge, in respect of the making of defence, is not within the intention of these statutes, and if it had bin expressly mentioned within a statute, that such a charge should not bee imposed, it had been a void statute, and contrary to the Law, that the Kingdome should not bee defended.

To all these I answer, That the matter now *Sol. 1.* in question is upon the Writ of 4. *Augusti*, whether that bee legall, or not ; and the suggestions therein bee sufficient or not for the Writ of *Mittimus*, mentioning, that *Salus Reipublice periclitabatur*, at the day of issuing forth of the Writ of 4. *Augusti* (which is a year and a halfe after the first Writ) doth not help it. And this is not notified to the Sheriffe and Inhabitants of the County, to make them the more carefull, and in the greater contempt, if a ship were not provided : but it is onely a notification to the Barons of the Exchequer, that the same was the reason why the same Writ issued forth.

2. That the suggestions are not absolute, that any such danger was, or such Navie was prepared by the Pirates, but onely mentioneth, *Quia datum est nobis intelligi*, that the Pirates had done such mischief, &c.
3. If such suggestions had been absolutely set downe, yet wee are not alwaies bound absolutely to beleieve them, because many times untrue suggestions are made in Writs and Patents; and yet it doth not lye upon the Kings conscience, neither doth the Law impute any fault to the King, if any such be; for the Law doth alwaies conceive honourably of the King, that hee cannot, nor will not signifie any untruth under his great Seale; but is abused therein, and the Law imputeth it to them that so mis-informed the King, and thrust in such suggestions into the Writ; and therefore all Patents grounded upon untrue suggestions are accounted void.
4. That the Demurrer confesseth nothing but that which is legally and well set downe; but if it bee illegall, the Demurrer confesseth it not, but is well offered for that cause.
5. If the Kingdome were in danger, yet a charge

charge must not bee laid in generall upon the Subjects, without their consent in Parliament; for either the danger is neere, and then present provision must be made by mens persons, and the present ships of the Kingdome, which the King may command from all parts of his Kingdome, as need shall require; but cannot command money out of mens purses, by distraining their goods, or imprisoning their persons: But if the danger bee further off, by reason of any forraine combinations (as it is conceived it may be here) then provision must bee made of ships by all the Kingdome for defence; then (as *Philip de Comines* saith, fol. 179.) that cloud is seene afarre off, before that the tempest fall, especially by a forraine war; and such invasions cannot fall so soone, but that the King may call his Sages together, and by consent make provision for such defence.

So I say here, if there be time to make ships, or prepare ships at the charges of the Counties; then is there time enough for his Majestie (if hee please) to call his Parliament, to charge his Commons by consent in Parlia-

ment to have a subsidiary aide, as alwaies hath been done in such cases; and they are not so long coming or meeting, when they come but to make provision for defence, being for all their safeties.

Cok. lib 9. fo. 1

For it appeareth by *Coke, lib. 9. fol. 1.* in his Epistle, that King *Alfred* made a Law, that the Parliament should be held twice every yeare; and oftner, if need require, in time of peace: so that it was then conceived, it was necessary to have Parliaments often to redresse inconveniences.

4. Ed. 3. c. 14.

Also by a statute made *4. Edw. 3. cap. 14.* It is enacted, that a Parliament shall bee held once every yeare, and oftner, if need be: Also by

36. Ed. 3. c. 10.

a statute made *36. Edw. 3. cap. 10.* It is enacted, for redresse of mischiefes and grievances that daily happen, a Parliament shall bee holden every yeare; as another time was ordained by a statute, which I thinke referreth to *4. Edw. 3.* Also it appeareth by the speed that was in the Parliament held in the third yeare of his Majesties raigne, five Subsidies were granted, two of them to bee paid within few daies after the Session of Parliament ended;

4. Edw. 3.

and

and therefore might (as this case is) beene ordered and provided for by Parliament, within seven moneths, as the time was betweene the Teste of the Writ, and the time prefixed for ships to be prepared and sent.

Where it is objected, that the Parliament perhaps would not have consented, and so the Kingdome might have been lost:

It is answered, That it is not to bee presumed, that the Parliament would deny to doe that which is fit for the safety and defence of the Kingdome, their owne estates and lives being in danger if the Kingdome were not sufficiently defended; for it is a Rule, *Nihil iniquius est presumendum in Legge*: so of the high Court of Parliament, that they would not deny that which is fitting: But I confesse I doe thinke, if it had beene moved in a Parliament, they would never have consented to these Writs, they never having been awarded before since the Conquest; and if they had consented, they would have taken a course how the same should have beene made with most conveniencie, and not to leave it to the

the Sheriffe to taxe them when and how hee would.

7. To that which hath beene said, That this charge is not within the intention of the statutes, and that a statute to prohibite such a charge for defence were void: I answer, That it is true, if a statute were that the King should not defend his Kingdome, it were void, being against Law and Reason; but a statute that money shall not bee charged or levied, nor that men shall be charged to make or prepare ships at their owne charges, without common consent in Parliament, I conceive it a good Law, and agreeable to Law and Reason; and the King may by Parliament restraine himselfe from laying such a charge but by consent: And then the King, being a just and pious King as ever governed the Kingdome (which wee that serve in his Courts of Justice have daily experience of) would not assent unto, or suffer any such charge (if he may be truly informed) that the imposing of this charge were against any one Law of his Kingdome, as this is against so many;

many; but would say, as it is said in the statute made in the 25. *Edw. 3. de provisoribus*, reciting the statute of *Carlyes*, made 35. *Edw. 1.* That the Pope should not bee permitted to present to Benefices, That he was bound by his Oath to see that and other Lawes in force and not repealed, to bee performed, That hee would not suffer such charges to bee laid, contrary to the Lawes and Statutes of his Realme, and would doe as the late famous Queene *Elisabeth* did, having required a charge upon divers her Subjects by particular letters from the Lords of her Councell of severall summes of money, for present helpe towards her warres in Ireland, hearing that one of her Judges being convented before her Lords for not payment of it, thereby discouraging others to pay it, answered, that it was against the Law that the same should bee imposed, there being an expresse statute against it, which hee being a Judge, was bound by his Oath to signify; he being, as much as in him was to be, a conservatour of the Queenes Oath in that behalfe: The Queene, I say, was very angry, that such an imposition had beene made a-

*Id est, Walme-
sley, & come
Hutton, Glam-
vill auxi.*

gainst Law, and commanded, that it should be stopped from further gathering, and to some that had paid their monies, the same were restored: and therefore the principall and onely fault in the charging of his Subjects by these Writs (if they be unlawfull, as I conceive they are) is in those that devised them, and informed him that they were lawfull, and such as his Progenitours had from time to time used to send out; and in his Judges, who have affirmed it to be lawfull: Therefore upon this point I conclude, That this charge by this Writ is illegall, and is no sufficient cause to charge the Defendant.

ob. Where it hath been much urged and argued by Master Solicitor and Master Attorney, that this Writ is warranted by the Kings Prerogative and power Royall, to send forth such Writs for defence and safety of the Kingdome in time of danger;

Sol. To this I answer, That I doe not conceive, that there is any such Prerogative; for if it were a Prerogative, I should not offer to speake against it: for it is part of our Oathes that are Judges, to maintaine the Kings Prerogative

rogative to the best of our skills, and not to suffer the same to be diminished; but if it bee (as I have argued it is) against the Common Law, and against so many Statutes, that the Subjects should be enforced to sustaine, or to contribute to any charge, without their especial assent, and common assent in Parliament, then there is no such Prerogative: For whatsoever is done to the hurt or wrong of the Subjects, and against the Lawes of the Land, the Law imputeth that Honour and Justice to the King (whose Throne is established by Justice) that it is not done by the King, but it is done by some untrue and unjust Informations; and therefore void, and not done by Prerogative.

This appeareth by the authorities of our Bookes; for Bracton, who is an ancient Writer in our Law, saith, *Nil aliud potest Rex in terris, cum sit minister Dei, & ejus Vicarius, quam de jure potest*: And there a little after, *Itaque potestas sua juris est, & non injurie; cum sit autor juris, non debet inde injuriam nasci occasio unde jura nascuntur*. Sir Edward Coke in the eleventh booke of his Reports, in the Case of Magda-

Bract. lib. 3.
fol. 107.

len Colledge, where the question was, Whether Queene *Elisabeth*, having taken a long Lease of a Colledge, being conceived to bee against the statute of 13. *Elis.* was sought to be maintained by her Prerogative; but resolved it could not, being against a statute, by which she was bound, although not named; and there fol. 72. it is said, *Hoc solum Rex non potest facere, quod non potest justè agere.*

Plowd.com.fc.
246, 247.

Plowdens Comment. fol. 246. & 247. in the Lord Berkley's Case it is said, that the Prerogative of the King cannot doe wrong, and his Prerogative cannot be any warrant to do any wrong to any.

Plowd.com.
fol. 487.

Plowdens Comment. fol. 487. in *Nichols* Case, it is said by Justice *Harper*, Although the comon law doth allow many prerogatives to the King, yet it doth not allow any that hee shall wrong or hurt any by his Prerogative.

21. Ed. 3. fo. 47.

21. *Edw.* 3. fol. 47. in the Earle of Kents Case it is said, That if the King under his great Seale doe make any grant to the hurt of any other, hee shall repeale and avoid it *Jure Regio*; for the King is accounted to be abused by untrue suggestions, when hee is drawne

to doe any wrong to the hurt of any other,
much more, I say, when he is drawn to do any
thing to the hurt of his Subjects in generall.

Sir Edward Coke, lib. 11. fol. 86. in *Darcies* Cok. l. 11. f. 86.

Case it is said, That every grant of the King
hath this condition unto it, *Tacite* or *expresse*:
Ita quòd Patria per donationem illam magis solito non
oneretur seu gravetur.

The Booke called *Doctor and Student*, fol. 8. Doct. & Stud.
fol. 8.
setting downe, that the Law doth vest the
absolute property of every mans goods in
himselſe, and that they cannot be taken from
him, but by his consent, ſaith, That is the rea-
son, if they be taken from him, the party ſhall
answer the full value thereof in dammages:
And ſure I conceive, that the party that doth
this wrong to another, ſhall, beſides the dam-
mages to the party, bee imprisoned, and pay a
fine to the King, which in the Kings Bench
is the tenth part of as much as hee payeth to
the party: So then, if the King will puniſh
the wrong of taking of goods without con-
ſent betweene party and party, much more
will hee not by any Prerogative take away
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any mans goods without his assent, particular or generall.

So I conclude, that I conceive there is not any such Prerogative, to award such Writs, to command men to sustaine such charge, or to be contributory to it, and to bee distrained or imprisoned for not payment thereof.

Also I conceive, that this is not an Act of Royall power; for if it bee illegall to impose such a charge, then is it not accounted as a matter of Royall power, but as a matter done upon an untrue suggestion, and a matter of wrong done; and wrong is not imputed to the King, for hee can doe no wrong, but it is imputed unto them who advised him to this course.

Royall power, I account, is to bee used in cases of necessity and imminent danger, when ordinary courses will not availe; for it is a Rule, *Non recurrendum est ad extraordinaria, quando fieri potest per ordinaria*; as in cases of Rebellion, sudden Invasion, and in some other case, where Martiall Law may bee used, and may not stay for legall proceedings; but
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in a time of peace and no extreme necessity legall courses must bee used, and not Royall power.

Therefore, where by the Statute of 31.H.8.^{31.H.8.c.8.} cap.8. which was made upon suppression of Abbies, when Rebellions were begun to bee stirred, it is recited, That sudden occasions happen which doe require speedy remedies, and for lacke of a Statute the King was enforced to use Royall power; It was enacted for the reasons therein mentioned, That the King, by the advice of his Councell therein named, two Bishops, two chiefe Justices, and divers others, and the more part of them, by his Proclamation might make ordinances for punishment of offences, and lay penalties, which should have the force of a Law (with a Proviso, that thereby no mans life, lands, or goods should bee touched or impeached) so that therein Royall power was fortified by a Statute; yet that Statute tooke care, that no mans lands or goods should be taken or prejudiced: but yet that Statute was thought inconvenient, and therefore by a Statute of 1.E.6. the same was repealed. ^{1.E.6.}

Bra&ton, lib. 2. cap. 24.
fol. 55.

Cok. 1. 7. fol. 11

Bra&ton, lib. 2. cap. 24. fol. 55. and the same is cited in Coke, lib. 7. fol. 11. in *Calvins Case*, *Regis Corona est facere justitiam & judicium, & tenere pacem, sine quibus Corona consistere non potest, nec teneri.*

Cok. 1. 7. fol. 5.

Coke, lib. 7. fol. 5. in *Calvins Case*, cited out of *Fortescue*, *Rex ad tutelam Legis, corporum, & bonorum erectus est*; which being so, hee cannot take any mans goods, or charge them without his assent, by any Prerogative or power Royall.

Also there can be no such necessity or danger conceived, that may cause these Writs to bee awarded to all Counties of England, to prepare ships at such charge, and with such men and munition, without consent in Parliament.

For the Lawes have provided meanes for defence in time of danger without taking this course, for that the King hath power to command all, or any persons of his Kingdome, to attend with Armes at the Sea coasts, or any other parts of the Kingdome; and also by his officers to make stay or arrest all or any the ships of Merchants, and others ha-

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ving ships, or as many as hee pleaseth, to goe with his Navie to any parts of his Kingdome for defence thereof, and to attend those to whom he appointed the guard of the Seas or Sea coasts, at such times and places as they should appoint: and this hath been alwaies taken and conceived to bee sufficient for defence against any Prince whatsoever; and yet the same was in times when the Navie of England was not so strong, as now by the blessing of God, and good providence of his Majesty it is: That this course was then so taken, it appeareth by divers Records, viz.

23.Ed.1.m.4. The Record reciteth, that the French King had prepared a great Navie upon the Sea, and purposed to invade the Kingdome, *Et linguam Anglicanam de terra delere*; and thereupon the King commanded all his ships and men with Armes to be in a readinesse to defend the Kingdome.

Scot.10. Edw.3. m.16. reciteth, that certaine Gallies in the parts beyond the Seas were prepared with provision of men and armes, and other necessities of warre, and ready to invade the Land; command was, that divers

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ships

ships should be in a readinesse to defend, and the ships of the Ports of Ireland to bee sent to England to help to defend the Kingdome.

10.Ed.3.m.22.

Scot.10.Edw.3.m.22. A Writ was to the Bayliffe of Southwales, reciting, that the Scots and divers others confederating together, prepare themselves to armes and ships in a great number, and intend to invade the Kingdome; command to them was, to have one ship ready upon the Sea to defend their coasts.

12.Ed.3.m.10.

Alman.12.Edw.3.m.10. A Writ to the Maior of London, *Quia hostes nostri in Galleis, cum multitudine non modica congregati, in diversis partibus regni hostiliter ingressi sunt, & civitatem prædict' celeriter si possunt invadere proponunt*, the King commandeth them to shut up the City towards the water, and to put all their men in Armes ready to defend, &c.

12.Ed.3.m.13.

Alman.12.Edw.3.m.13. A Writ to the Bailiffes of great Yarmouth, *Quia pro certo didicimus, quod hostes nostri Franciæ, & adherentes eisdem, Gallias & Naves guerrinas in copiosa multitudine in partibus exteris congregarunt, & eis hominibus ad arma, & alia arma parare faciunt, & proponunt se movere versus regnum nostrum, & navigium regni nostri,*

&

& portus prope mare scituat' pro viribus destruere,
& idem regnum invadere, &c. command to the
said Towne to prepare foure ships, with two
hundred and forty men, &c. At the same time
like Writs went out to twenty other Towns
upon the Sea coasts.

Franc. 26. Edw. 3. m. 5. A Writ to the Earle of 26. Ed. 3. m. 5.
Hunt. and others, *Quia adversarii nostri Francie,*
Nos & Regnum nostrum invadere machinantes, ma-
gnum navigium parari fecer' & armari, nedum ad
Regnum nostrum Anglia subito attrahend', ad nos
& domini' nostr', & totam nationem Anglica-
nam pro viribus subvertend', &c. commanding
them to guard all the coasts of Kent, and to
array all able men with armes to bee ready to
defend the Sea coasts.

5. Henr. 4. m. 28. A Commission is to Tho- 5. H. 4. m. 28.
mas Morley and others, *Quod cum inimici nostri*
Francie, Britan. Scotia, & alii sibi adhaerentes, in-
ter se obligat' magna potentia armat' super mare in
astate proximi futur' ordina verunt, & intendunt
Regnum nostrum Anglia invadere, &c. command-
ing them to array men with armes to de-
fend, &c.

4 Henr. 8. pars 2. the King by Proclamation 4. Hen. 8. p. 2.

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into the County of Kent sheweth, that it is come to his knowledge of certaine, that his ancient enemy the French King hath prepared and put in readinesse a great and strong Navie furnished with men of warre, to invade the Kingdome of England, the King appointed the Lord of Alburgeny and others to put men in array, and to bee ready to defend that County.

Anno 1588. when the great invasion was by the Navie termed the Invincible Navie, which was fore-seene long before, this course of preparing ships by every County of the Kingdome was not taken or appointed; yet in all these times, when there appeared such danger of invasions, there never went any such Writs into any the Counties of England to provide ships, but the Navie of England, and the Army of England was alwaies accounted sufficient for the defence of the Kingdome: So I conclude this point, that I conceive this course cannot bee taken by any Prerogative or Royall power, nor any allegation of necessity or danger.

4. For the fourth point, I conceive, that if it were

were legall to lay such a charge upon maritime parts, yet to charge any Inland County with making of ships, and furnishing them with Masters, Mariners, and Souldiers at their charge, which are farre remote from the Seas, is not legall; nor warranted by any former President; for it commandeth an unreasonable and impossible thing: and then the Writ commanding such a thing as is unreasonable and not possible for the parties commanded of themselves to performe, without help of other Counties, is alwaies illegall; for it is a Rule, That *Lex non cogit ad impossibilia*; therefore if one by Covenant bind himselfe to doe a thing impossible, the Covenant is void. This appears by the Book case in 40. *Ed. 3. fo. 6.* where the Case is expressly, That if a man do covenant to doe a thing that is impossible, the Covenant is void, and the deed is void in that respect: Also the Book in 2. *Ed. 4. fol. 2.* If a feoffment bee made upon condition to bee void if the feoffee do not a thing which is impossible, this feoffment is good and the condition void, for it was the fault of the feoffor to annex such a condition; & this appeareth by the

case of an Arbitrement, If the Arbitrator award that one shall enter into bond with such a one as his surety to pay a summe of money, or to doe any other act, it is void as to the finding of a surety at the least; for it is not in his power to compell him to bee his surety, therefore the Law accounteth it unreasonable, and so void; and this appeareth by the Booke Case, 17. Ed. 4. fol. 5. wherein it is so resolved.

So this Writ commanding the Sheriffe and Inhabitants of an Inland County to find a ship furnished with Masters and Mariners, whereas there is not any Shipwright that hath skill to make ships, nor any Masters or Mariners ever there inhabiting to guide a ship; (for they are still conversant about matters of the Plough, and feeding Cattell, and Husbandry, and are trained up by musters for skill of Armes to defend the Countries, and not with Sea affaires; for most of the County never saw a ship, nor know what belongeth to Masters or Mariners of ships; and the County is not bound to seeke men out of the County for such men, and perhaps
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if they should, they cannot know where to hire them :) Therefore when such Writs to Inland Counties have been awarded to find a ship with Masters and Mariners, it being conceived by mis-information that they were maritime Townes, and had Ships and Mariners dwelling with them, the truth thereof being made to appeare to the contrary, they have been discharged, as appeares by a Record in 13. *Edw. 3. pars 2. m. 14.* where a Writ went to the Admirall of the Fleet, Those parts upon complaint to the King, by the men of Bodmin in the County of Cornwall, that they were unjustly charged to find a ship with Masters and Mariners, whereas that Towne was no Port Towne, nor adjoyning to the Sea, but farre within the Land, nor ever had ships lying there, nor Mariners, nor Sea-men, nor ever used to find any such for Sea service; and that their Maior and Officers were imprisoned for not finding such a ship; Thereupon the King appointed to have it enquired, whether their allegations were true, and if it were true, signified that hee would not have them so unjustly charged, but that they should

should bee discharged thereof: which sheweth, that it was then accounted unjust to lay such a charge upon a Towne that was an Inland Town, and had no Mariners inhabiting in it, much more when such a charge is upon an Inland County, which is much further remote from the Sea, and cannot performe by themselves that which the Writ commandeth.

ob. But this Record being objected by the Defendants Councell, Master Solicitor gave answer, that the same was because the Admirall of his owne authority had charged them, which was not according to his Commission, for he was onely to charge the Ports and Sea Townes; but that the same may not bee done by the Kings Writ, the Record doth not prove.

sol. But to this I answer, That I conceive it is all one when such a charge is laid upon a Towne by Writ, which is an Inland Town; for so it appeareth by another Record of the same yeare, viz. 13. *Edw. 3. pars 1. m. 14.* where a Writ was directed to the Admirall of the Fleet, *Ab ore Thamesiæ versus partes Occidentales,* reciting

reciting where the King by his Writ to the Towne of Chichester had commanded the Maior and Comminalty there, that they should make *undam Navem, & duos Escularios de guerra parari*, with Mariners and men at armes to bee at Portsmouth such a day, to goe with the Kings ships; and that they had complained that they had not, nor ever had any ships arriving in that Towne, nor had any Sea-men or Mariners dwelling there, and that it appeared unto the King by Inquisition of a Jury returned into his Chancery, this allegation to bee true; therefore because the King would not have them *indebitè pragravari* (for so bee the words of the Record) the King commandeth the Admirall, that they shall not be troubled nor distrained for not performance of such service; whereby it appeareth, that if they, being within few miles of the Sea, should not bee charged to find such a ship, much more Inland Counties, which are much further remote from the Seas, are not justly to bee charged with finding any Ships and Mariners: Therefore I conclude this point, That I conceive this Writ, in that respect,

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spect, is not legall nor warranted by any former President.

The fifth and great point hath beene (and indeed the chiefe Argument hath been a multitude of Records and Presidents which have been cited, that should warrant these Writs, and) that the King hath done nothing, but what his former Progenitors have done, and have lawfully done; and that hee doth now but *more Majorem*, and that which alwaies in ancient times hath beene done and allowed: and therefore ought now to be allowed.

I confesse this allegation much troubled mee, when I heard those Records cited, and so learnedly and earnestly pressed by Master Sollicitor, and after by Master Atturney, to bee so cleare, that they might not bee gain-said, but that they proved a cleare Prerogative, or at least a Royall power, that the King might do so, especially when my brother *Weston* and my brother *Berkley*, who had seene the Records, pressed them, and relyed upon them for the reasons of their judgements, I say, I was much doubtfull thereupon, untill I had perused all those Records sent me by the Kings Council,
and

and satisfied my judgement therein.

But now I answer, That if there were any such Presidents (as I shall shew that there is not one shewed to mee to prove this Writ to be usuall) yet it were not materiall, for now we are not to argue what hath beene done *de facto*, for many things have been done which were never allowed; but our question is, What hath beene done and may bee done *de jure*: And then, as it is said in *Cok. lib. 4. fol. 33.* in *Mittons Case*, *Judicand^{us} est legibus, non exemplis*: and *lib. 11. fol. 75.* in *Magdalen Colledge Case* it is said, *Multitudo errantium non parit errori patrocinium*: and *lib. 4. fol. 94.* in *Slades Case*, Multitude of Presidents, unlesse they bee confirmed by Judiciall proceedings in Courts of Record are not to be regarded; and none of these were ever confirmed by Judiciall Record, but complained of.

But to give a more cleare answer unto them, I say, That in my opinion, upon view and serious reading of all the Records that have beene sent mee on the Kings part (for I have read them all over *verbatim*) and I presume they sent all that were conceived to bee

materiall, and I having taken notes of every one of them, and diligently considered of them, I conceive there is not any President or Record of any Writ which maintaines this Case; for there is not any President or Record of any such Writ sent to any Sheriffe of any Inland County, or Maritime County, to command the making of ships at the charge of the County, but this is the first President that ever was since the Conquest that is produced in this kind; but it is true, that before 25. Ed. 1. there have been some Writs to Maritime Townes and Ports, and other Townes, as London, &c.

Where they have had ships, and Mariners to provide and prepare ships, and to send them to places where the King pleased, to appoint upon any just cause of feare of any danger, for defence; and great reason that they having ships, and Masters of ships, and Mariners, should bee at the Kings command to bring all, or as many as hee pleaseth, for defence of the Sea and Kingdome, being those that had the most benefit of the Seas, and likely to have the losse, if the Seas and Coasts
were

were not duely guarded, and those were most commonly appointed to bee at the Kings charge; but sometimes, upon some necessity, they were appointed to be at the charge of the townes and parts adjoyning, which I thinke was the true cause of the complaint in Parliament, in 25. *E.1.* and the making of that statute for staying that course; for there is no Record afterwards of any such Writ in King *Edw. 1.* his time, after that statute to Maritime townes, to prepare or send ships at the charge of the townes, and none after, untill the time of *Edward* the third, and then the warres being betweene him and the French King, in *Annis 10, 11, 12, 13.* of *Edw. 3.* were the most Writs awarded to the Maritime townes, to send ships at their charge sufficiently furnished; and those I thinke were the principall cause of the making of the statute of 14. *Edw. 3. cap. 1.* and after that statute no such Writs, nor any Commissions for that purpose were awarded to make any ships at the charge of Maritime townes, untill 1. *Ric. 2. m. 18.* when Writs were awarded to many Maritime townes, and Inland townes, for the making of ships, which

Record was much pressed by Mr. Atturney, & afterwards by my brother *Weston*, & my brother *Berkley* to prove that this course was and might be practised after the stat. of 14. *Ed. 3.* for sending forth such Writs, & allowed; but that Record is fully satisfied: for it was grounded upon an ordinance in Parliament, in 1. *Ric. 2. m. 52.* that all ancient Cities, Burroughes, and Townes, that would have their liberties confirmed, should have them confirmed, without any charge of fine, save onely to make a ship of warre for defence of the Realme; so this was not compulsory to any, but voluntarie to those that would have their liberties confirmed: And afterwards in 1. *H. 4.* Commissions were awarded for the making of such Vessels for warre, but those issuing forth, without any ordinance in Parliament, were complained of in Parliament, 2. *H. 4. m. 22.* as to be against the liberty of the Subject, as appeareth by the Statute before recited, and the Commissions expressly repealed: And since that time of 2. *Henr. 4.* no such Writs issued forth in any age to any Maritime Towne, to cause ships, or prepare ships at their owne charge

charge for the Kings service, untill these late Writs.

And now I shall take a short view of all the Records that have been cited, and sent unto mee; and leave them to the judgement of my Lords and others, if any of them prove these Writs to be usuall and legall.

The Records in the time of King John.

THree of these are to arrest and make stay of all ships that they should not goe out of the Kingdome, but to bee ready for the Kings service; and the other was to bring ships of particular Townes to the mouth of the Thames for the Kings service.

6. Joh. m. 11.

9. Joh. m. 3.

14. Joh. m. 2.

17. Joh. m. 7.

A Commisison to guard the Seas to *John de Marshall*, and to the Sheriffe of the County of Lincolne, and all others to attend his commands.

15. Joh. m. 4.

Writs to the Barons of the Cinque Ports, and divers other Townes, to have their ships ready for the Kings service.

15. Joh. m. 6.

In

In the time of King Henry the third.

- 14.H.3.m.14. **A Writ to the Bailiffe of Portsmouth to prepare one Gally.**
- 14.H.3.m.5. **A Commission to the Bishop of Rochester and others, and to the Sheriffe of Kent, to cause all men at armes in that County to bee sworn, and to asseffe them what armes they should find.**
- 48.H.3.m.4. **A Writ to the Sheriffe of Norfolke, commanding him to cause them which were appointed to attend at the Sea coasts in that County, and having served forty daies intended to depart, that they should stay eight daies longer by reason of the danger, and longer, if need require.**
- The like was sent to the Sheriffe of Suff. and Essex.**
- 48.H.3.m.2. **A Writ to the Maior of Bedford, commanding him to provide for the expences of them that were sent from thence for the guarding of the Seas, yet it is but for eight daies more after the date of the Writ.**
- 48.H.3.m.3. **A Writ to the men of Essex, Norff. and Suff. appointed to attend for the guarding of the**

the Sea coasts, reciting that the King had appointed *T. de M. Custodem maris, & partium maritimarum* within their Counties, commanding them to assise him, and to performe therein what he required.

A Writ to the Sheriffe of Cambridge and Huntingdon, to command all men of those Counties able to beare armes, to come to the King to London. ^{48.H.3.m.7.}

In the time of King Edward the first.

A Writ to those of Essex, Norff. and Suff. ^{23.Ed.1.m.5.} reciting that such persons were appointed *ad custod' Maritini* in those Counties, commanding them to attend them.

Another Writ to the Sheriffe of Norff. and Suff. ^{Ibid.} reciting that certaine Constables of those Counties were appointed to assesse men at armes, sufficient for the guarding of the Sea coasts, commanding him to distraine, and compell them so assessed for to goe.

Writs to the Sheriffe of Lincoln, York, and Northumberland, reciting that hee had commanded *A. de B. ad congregand' & capiend' centum Naves* between Ley and Barwicke, *& ad*

those

M

homines

homines potentes in eisdem navibus ponend', commanding them to assise him there.

24. Edw. I.
Rot. 62.

A Writ out of the Exchequer to *Adam de Guerdon & alii*, Guardians of the Sea coasts in the county of Southt. to distraine the Abbot of Reading for to find nine horses, which he was assessed at for that service.

24. Ed. I. m. 16.

Writs to all Archbishops, Bishops, Earles, &c. in the counties of Somerset, Devonshire, and Cornwall, to attend with their horsemen and footmen for defence of the sea coasts in those parts, when they shall bee required by the Guardian of those coasts.

24. Edw. I.
Rot. 78.

A Writ out of the Exchequer directed to all Archbishops, Bishops, Earles, &c. in the county of Norff. and to the Sheriffe of Norff. reciting that *Peter de Rutlin* was appointed *ad custodiam partium maritimarum illarum*, commanding them to assise him.

Ibid.

A Writ out of the Exchequer directed to the Sheriffe of Berks, reciting that the King was informed by *Adam de Guerdon*, Guardian of the sea coasts in the County of Southt', that those men of the County of Berks that were come to the defending of the sea coasts in those

those parts, came not as they were warned, commanded to distraine them and compell them, &c.

The like Writs were awarded to the Sheriffe of Wiltshire, South' &c.

A Writ to the Bayliffes of great Yarmouth, reciting that the King was informed that certaine of Flanders and French in a great multitude, apparelled like Fishermen, intending to invade their Towne, warning them to gather their Ships together, and all their armes to defend themselves against such attempt. 24. Edw. 1.
Rot. 81.

A Writ to all Sheriffes and Bayliffes, &c. reciting that hee had appointed some therein named, *Ad congregand' numerum Navium, & Galliar' major' &c.* commanding the Sheriffes in their severall Counties to bee assisting unto them therein. 24. Edw. 1.
int. Com.

Note, all these Records are for arrayes and congregating of ships, but none to make or prepare ships at the charges of the Counties. Nota.

A Writ of *Superfedeas* to the Guardian of the seas in the County of South' to distraine Hugh Plesis to find armes for his lands in 24. Ed. 1. m. 9.

that County for the guarding of the seas, because he was in service with the King.

24. Ed. 1. m. 26.

A Writ to the Sheriffe of Essex to discharge for the Winter time those that lay at the sea coasts with their armes to defend their coasts, but commanding them to bee in a readinesse when they should be againe commanded.

The like Writs were then awarded to divers Sheriffes of Maritime Counties to the same purpose.

25. E. 1. m. 12.

A Writ to the Sheriffe of Lancaster, reciting that whereas the King had formerly commanded him to goe to all the Ports and Townes where ships were, commanding the Bayliffe of the Ports to have all the ships of the burthen of 400. tons at Winchester by such a day, now commandeth the Sheriffe to see them made ready and sent.

Ibid. 13.

The like Writs directed to the Sheriffe of Lincolne, York, Northumberland, and Cumberland.

Ibid. 14.

The like Writs directed to 19. other Ports and Townes in other Counties.

27. Ed. 1. m. 20.

A Commission to send to array men at armes in the County of Westmerland.

In

In the Exchequer (shewed by the Defendants Councell) Writs were to severall Maritime Townes, and other Townes upon the sea coasts where ships were usually made, to make ships and gallies, and that the King will allow and pay for them when hee knoweth the charge thereof.

23. Edw. 1.
Rot. 77.

In the time of King Edward the second.

A Writ to all the men in the townes upon the sea coasts and Ports of the sea betweene Southt' and Falmouth, reciting that the King had appointed *John de Norton* to make provision of a Navie in the said townes and ports at their charges, commanding them to perform what he in that behalfe shall require.

Pat. 9. Ed. 2.
para 2.

A Writ to the Bayliffes of Yarmouth, reciting that where the King had commanded all the ships of the burden of 50. tuns, from the Thames mouth towards the West part, to be at Portsmouth such a day, &c. and they had sent two ships, that the Masters and Mariners complained that they could not serve without wages, and therefore appointed them to send them wages.

Claus. 20. E. 2.
m. 8.

M 3

A Writ

20.Ed.2.m.10

A Writ to the Bayliffes of Yarmouth, commanding them to send all their ships of the burthen of 30.tuns and above, to Orewell in Suff. with double tackling, victuals, and other things necessary for one moneth.

The like Writs at the same time to other townes, to the number of 34.

20.Ed.2.m.7.

A Writ to the Maior of London to provide 3. ships with men and munition, to goe with 9. ships of Kent to guard the sea coasts.

15.Ed.2.m.15

A writ to the Sheriffe of Norff. commanding him to warne all Barons, Bannerets, Knights, and Esquires, which were commanded to attend the King at Coventry at such a day, and to goe with the King.

15.Ed.2.m.15.

A writ to the Sheriffe of Norff. and Suff. commanding him to arrest all Barons, Bannerets, Knights, and Esquires, which were commanded to attend the King at Coventry, at such a day therein named, and came not, to be before the King and his Councell at London to answer.

The Record saith, like Writs were then awarded to divers other sheriffes of other counties.

Writ

14

A Com-

A Commisſion to array all perſons between the ages of 16. and 60. with armes convenient, to come to the King when they ſhall be required. 16. Ed. 2. m. 13.

A writ to the Archbiſhop of Canterbury, commanding him to array all his ſervants and family to bee ready to defend the Kingdom, if any invaſion ſhould bee, the like writs at that time to all the Biſhops. 19. Ed. 2. m. 6.

In the time of Edward the third.

A writ to the Maior and Bayliſſe of Southampton, commanding them to cauſe all their ſhips of the burthen of 40. tuns and above, to bee furniſhed with men at armes and victuals, ready to defend the Land, if any invaſion ſhould happen. 2. Ed. 3. m. 91.

A commiſſion to *Hugh Courtney* to guard the ſeas in the counties of Devonſhire and Cornwall, & commanding all others to aſſiſt him. Scot. 7. Ed. 3. m. 19.

The like commiſſion to *Hugh Courtney*, for guarding the ſeas in the ſame county. 10. Ed. 3. m. 25.

A writ is to *Bartolomew de Inſula*, for cuſtodie of the ſea coaſts in the county of Southampton, and therein is a command to *John Tichborn*. Ibid.

born and others for the county of Southamp.
and to *William de Pershiore* and others for the
county of Berks, and to *John Mandit* & others
for the county of Wilts. to array men with
armes, and to have them in readinesse to de-
fend the coasts of the county of Southampr.

Scot. 10. E. 3.
m. 2.

A writ to *William Clinton* guardian of the
Cinque Ports and others, to survey all the
ships of the Cinque Ports and other Ports
from the mouth of the Thames unto Ports-
mouth, and to cause them to bee furnished
with armes and victuals for 12. weekes from
the time they shall go from Portsmouth.

Scot. 10. Ed. 3.
m. 2.

A Writ to the Maior of Winchester, to
cause the ships appointed for that town to be
furnished with men at armes and victuals,
and other necessaries for 12. weekes.

Scot. 10. Ed. 3.
m. 16.

A writ to the Admirall of the Fleet from
the mouth of Thames unto the West parts, to
keep upon the seas the ships of the Cinque
Ports, and other ships arrested to defend the
Kingdome against any attempt of invasion.

The like writ was then to the Admi-
rall of the Fleet from the mouth of the
Thames unto the North parts, with like com-
mand

mand to hold the ships together upon the sea.

A writ commanding the ships of the Ports of Ireland to bee sent hither to guard the seas here. Scot. 10. Ed. 3. m. 16.

A writ to the Bayliffes of Yarmouth, to cause the men of that towne to contribute to the charges of the ships, and men and victuals sent from thence for the defence of the Kingdome. 10. Edw. 3. m. 12.

A writ to all the Liberties and men of South-Wales, to have one ship riding upon the seas for the defence of those parts. Scot. 10. E. 3. m. 22.

The like unto the men of North-wales. Ibid.

A writ to the arrayers of men for the county of Berks, to compell them of that county assigned and assessed for the keeping of the sea coasts in the county of South. to go to Portsmouth by a day therein appointed. Scot. 10. Ed. 3. m. 28.

A Commission, reciting that the King had appointed all the ships from the mouth of the Thames Northward to bee arrested, and to cause them to bee furnished with munition, men, and victuals, and to bee brought to Yarmouth; and that the men of Lin refused to contribute to the expences of the charge of the

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men sent in the ship from that town, and the furnishing of that ship; and therefore commanded the comers therein named to assesse them that refuse so to contribute, and to distraine them for it.

Alm. 12. Ed. 3.
m. 13.

The like to compell the men of Bardsey, to contribute for the expences of the men of that towne.

Clanf. 12. Ed. 3.
m. 16.

The like to compell the men of Surrey and Sussex, to contribute to the expences of the men of those counties, that attended for the guarding of the sea coasts there.

12. Ed. 3. m. 8.

A writ to all Archbishops, Bishops, &c. and to the Sheriffe of Kent, and to the Barons of the Cinque Ports, and all others in that county, commanding them to bee assisting to J. de Cobham, to whom the custody of the seas in those parts is committed, and to defend those coasts against forraigne invasion.

Alm. 12. Ed. 3.
m. 10.

A writ to the Maior of London, reciting the danger of invasion, &c. commanding to shut up the gates towards the water, if the enemies approach.

Alm. 13. Ed. 3.
m. 12.

A writ to the Bayliffes of Yarmouth, reciting by his writ he had commanded 4 ships of
of

of warre of that town to be made ready with men, munition, & victuals for three moneths, at the charges of the towne, to bee brought to Orewell, and that they failed to come at their day, to the great perill of the Land; therefore commandeth the Bayliffes to compell them at another day therein prefixed to be at the same place. There it is set down that the like Writs were awarded to the Bayliffes of 17. other townes, for the sending their ships, being charged some for 1. ship, and some for 2. ships.

A *Supersedeas* for the Abbot of Gwaverra to find a ship as he was appointed, because he found divers men at arms in the Isle of Wight. Clauſ. 13. Ed. 3
m. 35.

A *Supersedeas* for the Abbot of Ramsey for being charged with armes for the guarding of the coasts of Norff. for his lands in Norff. because he was by command attending with all his forces in the countie of Huntington, for the safety of those parts. Clauſ. 13. Ed. 3
m. 38.

A writ of *Supersedeas* to the arrayers of armes in the county of Oxon' to discharge *John Mandit* to serue there, because he attended in Wilt. Clauſ. 13. Ed. 3
m. 14.

A writ &c. to the arrayers of armes in the county Clauſ. 13. Ed. 3
m. 14.

county of Wilt. which is onely concerning the payment of souldiers wages, who attended to guard the sea coasts.

These being all the Records shewed, it appeareth that there were no writs issuing out in those times to any Sheriffes of Inland counties, or Maritime counties, to make or prepare ships for any occasion whatsoever, but onely to Maritime townes, to send their ships, or to prepare ships at their owne charges.

The Records since 14.E.3. shewed me, doe not shew any writs to bee awarded to any Maritime towns, to prepare ships at the charge of the townes.

But those Records of 1.Ric.2. and 1.Hen.4. which I have before answered, and the Records since that time shewed unto me (except such as I have formerly mentioned in my argument) are these :

Scot. 20. Ed. 3.
m. 14.

A commission to *Nicholas de Cartlape*, to array men to resist the Scots.

Ibid.

A writ to the Maior of Yorke, to array all their men to be ready when they shall be required.

20. Ed. 3. m. 15.

A commission concerning arrayes of men
in

in the counties of Derby and Nottingham, and to punish such as came not when they were appointed.

A writ to the arrayers of men in the county of South-hampt. to discharge the Abbot of Bettaile to find armes for the sea coasts there. Rot. Franc.
21. E. 3. m. 31.

A commission to *John de Bodingham* for the custody of the Ports and Maritime parts in Cornwall, and to array all the men to be in a readinesse. Franc. 25. E. 3.
m. 20.

Note, all these Records are onely for arrayes of men, and none for preparing ships. Nota.

There it is set downe, that the like Commissions are to others in severall counties.

A commission to the Earle of Huntington, to have the custody of the Ports in Kent, and to array men, and to set up beacons, &c. which is the first I observe in that kind. Franc. 26. E. 3.
m. 5.

The like commissions were then to severall other persons, to array men in severall counties, as Warwick, Oxon. Berks, Bucks, &c.

A writ to the Archbishop of Cant. reciting the danger of invasion by the French to hurt the Church and Kingdome, to array all his Clergy in his Diocesse, &c. to bee ready to Franc. 46. E. 3.
m. 34.

goe with the Kings forces to defend, &c.

The like writs to all other Bishops in the Kingdome.

Franc. 50. E. 3.
m. 47.

A writ to the arrayers of men in the county of Norff. and to the Sheriffe of Norff, commanding them to command all great men and others, that had mansions upon or neere the sea coasts, to resort with all their families for defence of those coasts.

The like to the arrayers, and to the Sheriffes of ten other Maritime counties.

Scot. 29. Ed. 3.
m. 13.

A commission to the Bishop of Durham and others, to array men in Durham, Cumberland, and Northumb. to resist the Scots.

Franc. 40. E. 3.
m. 31.

A writ to *William Hench* and others, to remove with all their families to their houses upon the sea coasts.

In the time of Richard the second.

1. R. 2. m. 7.

A writ to the Bayliffe of Scardeburgh, because the towne was upon the coasts of the sea, and in danger by invasion, carefully to look to the custody thereof, &c.

Eod. Rot. m. 12

A writ to the Maior and Bayliffes of Oxon. to repaire the walls of the town, and to compell

pell those that had lands there to contribute to the expences thereof.

This Record hath beene much urged by M^r.Sollicitor and M^r.Attorney, that if the King have such a power to command the walls of a towne to bee repaired, much more to command ships to be made, which are the walls of the sea, and consequently the walls of the Kingdome. But this is clearly answered, for that it is but a private charge of a private towne, and that had beene formerly so walled, and for defence & safety of the town, and none charged but those that have benefit thereby, and so proveth nothing to the Case in question.

One writ to the Sheriffe of Kent, and another to the Sheriffe of Essex, commanding an ordinance made, &c. by the King and his Councell, for setting up of Beacons, and keeping watch about them. Eod. Ror. m. 42.

A writ to the Archbish. of Cant. to command all his Clergy betweene 16. and 60. to bee arrayed and put in armes, both horse and foot, according to their qualities, to bee ready to defend the Kingdome. Scot. 7. R. 2. m. 8.

anquill

A writ

Franc. II. R. 2.
m. 13.

A writ to a Serjeant at armes, to array all ships of warre in the Ports of Plimouth and Dartmouth, and other parts in the county of Cornwall, and to bring them to Hanks hook to go with the Kings Majesties ships.

In the same Roll are divers other writs to divers other Serjeants at armes, to arrest the ships in divers other ports.

Scot. 21. R. 2.
m. 3.

A commission to the Duke Albermale, to array men in the West Marches towards Scotland to resist the Scots.

Rot. Vierg.
1. H. 4. m. 11.

A writ to the Sheriffe of Derby and Nottingham, reciting that the King certainly understood, that the Scots intended with a great power to invade the Kingdome, commandeth him to proclaim in all parts of his counties, that all men betweene 16. and 60. should put themselves in arms competent, according to their degrees, to bee ready upon two dayes warning to defend the Kingdome.

Claus. 1. H. 4.
m. 12.

The like writs were then directed to the Sheriffes of Lincoln, Yorke, and Lancaster.

A writ to the Archbish. of Cant. reciting
Satis informati estis qualiter inimici nostri Franc. & alii sibi adherentes, cum magna classe navium, cum

magna

magna multitudine armator' super mare congregat', Note, that although this great danger be mentioned, yet no command to any county to prepare ships.
diversas villas per Costeram regni nostri invadere, &
nos & regnum nostrum destruere, & Ecclesiam Anglicanam subvertere intendunt & proponunt: Thereupon commandeth, that the Clergy in that Diocese be arrayed and armed, and to be ready at the Kings command to goe against the enemy.

The like Writs were then awarded to every Bishop in England.

A commission to Thomas de Morley and others, and to the Sheriffes of Norff. and Suff. and to the Bayliffes of great Yarmouth, reciting, *Quod cum inimici Franc. Brittan. Scot. & alii sibi adherentes, inter se obligat. magna armat. super mare in aestate proxim. futur. ordina verunt & intendunt regnum invadere, &c.* commandeth to survey that town of Yarmouth, & to fortifie it. Pat. 5. H. 4. pars 2. m. 28.

Note here also, notwithstanding such great danger mentioned, and such distance of time, yet that no Writs issued to any counties to prepare ships.

A commission to array all men at armes in the West-Riding in Yorkshire, to bee ready to defend those parts. Pat. 3. H. 5. pars 2. m. 37.

The like Commissions to others in nineteen severall counties.

Pat. 13.H.6.

m.10.

Pat.39.H.6.m

Pat.39.H.6.

m.12.

Pat.39.H.6.

m.1.

Pat.10.Ed.4.

m.12.

Pat.10.Ed.4.

m.13.

Pat.49.H.6.

m.22.

Pat.1.H.7.

pars 1.

1.H.7.pars 3.

4.H.8.pars 2.

{ Commissions for arraying men for defence of the Kingdome, if invasion shall be, and for repressing of Rebels.

Commissions unto *George Duke of Clarence* and others, to array men for defence.

A Commission to *John Lord Howard*, to be Captaine of all the Forces.

A Commission to *Marquesse Mountague*, to array and put in armes all men beyond Trent.

A Commission to *Rich. Fitz-Hugh, &c.* and to the Sheriffe of Yorkshire, to array and cause to bee armed all able persons, Abbots, and others, to be ready to defend the Kingdome.

A Writ to the Sheriffe of Norff. and Suff. to proclaime in all parts of those counties, for that there was like to be open wars between *Charles of France*, and the King of Romans, and great Navies are prepared of either side, commandeth that watch and ward bee kept, and beacons kept, to give warning that every man be ready if need be, to come and defend the Kingdome.

A Writ to the Sheriffe of Kent, commanding

ding him to proclaime in his county that the King bee certainly informed, that the French King hath prepared and put in readinesse a great and strong Navie, furnished with men of warre, to invade this his Kingdome; therefore commandeth all men, betweene the age of 16. and 60. to put themselves in armes, and to bee ready to defend the Kingdome at an houres warning.

Cómissiõners went to take view of all the II. ELLG horses of England for service, and to survey all the armes, to have them all put in readinesse, as necessity should require.

Now it appeareth upon view and examination of all these Records, most of them being cited by M^r. Sollicitor and M. Attorney in their severall arguments, that there are none to prove the sending of any such Writs to Inland or Maritime counties to prepare such ships, although there hath beene many times great danger; nor yet any Writs to Maritime towns after the Stat. of 14. E. 3. to charge them to find any ships at their charges: So then I conclude this point, that I conceive this Writ is not warranted by any former President.

Now I come to examine the points of this Writ, whether the same bee legall, and warranted by any former Presidents, and I conceive it is not: For

1. First, the motives mentioned in the Writ are, *Quia datum est nobis intelligi*, which is no certain information, *quòd quidam prædones & maris grassatores*, did take the Kings subjects, Merchants and others, and carried them into miserable captivity.

2. *Cumq; ipsos conspiciamus navigium indies præparantes ad mercator' nostros molestand', & regnum nostrum gravand'*. All these and those following I conceive are not sufficient motives, and were never in any President before to have a royall Navie prepared, for the former Presidents are, that great Princes in open times of hostility had provided great Navies with munition and souldiers, with intent to invade the Kingdome, as appeareth by the former Presidents: and against such provision it was necessary to provide a royall Navie, the Kings ships and all the ships of the Kingdome to be gathered to withstand them; but to make such preparation against Pirats, it was never put in any Writ

Writ before: for when Pirats infested the seas, they came as it were by stealth to rob and to doe mischief, and they never dare appear, but when they may doe mischief, and escape away by their lightnesse; but against them the usuall course hath beene, that the Admirall or his Deputy with some few ships have scoured the coasts, and not to imploy a whole Navie, and this appeareth by the Record of 25. E. 1. m. 9. where *Will. Leyborne* the Admirall was appointed upon such an occasion with ten ships to lye upon the seas; and the usuall practice hath beene, when they hover upon the seas, by sending a few ships of war to scatter them, and to make them absolutely to flye away: & there is no doubt of loss of the dominion of the seas by any act that Pirats can do, neither convenient that every county of the Kingdom should prepare ships against them.

The command of this Writ to provide a ship of 450. tuns at the charges of the county, furnished with Masters and Mariners, which is impossible for them to doe for the reasons before alledged; and therefore is illegall, and not warranted by former President. 2.

The command of the Writ to find wages for the souldiers for 26. weeks after they come to Portsmouth, when they are out of their counties, and in the Kings service, is illegall, being against the course of Presidents in divers times, and against divers expresse statutes: and this appeareth by divers Records. 15. Job. In the Writs of Summons of the Tenants by Knights service, it is expressly mentioned, that after their 40. daies service (for so many daies they were to doe service by their tenures) they should be satisfied *ad denarios Regis*.

Pasch. 26. E. 1. amongst the Writs of the Exchequer it is there set down, that the footmen of Cheshire being 1000. which were appointed to goe to the defence of the borders upon Scotland, would not stirre out of the county without their wages; and there is set downe, that one therein named was sent down with monie to pay the said footmen.

Mich. 26. E. 1. Inter Brevia irretornab. in the Exchequer, by reason of the invasion of the Scots, many thousands of souldiers were taken from divers parts of the Kingdome, *ad vadia Regis*, and there mentioned, that Clerkes were sent
downe

downe with mony to pay the souldiers of severall counties their wages.

In the Exchequer in accompt the wages of 30.Edw.1. land souldiers for severall counties, and the wages of Mariners, are set downe what the wages that was paid came to by day, both by sea and land.

Inter Brevia in the Exchequer, the Wardens Trin.31.E.1. of the Marches of Scotland signified unto the Barons, that the men of Cumberland and Westmerland, appointed for the defence of the Marches, would not stirre out of their counties without wages, whereupon order was given for wages for them.

Commissions went out to pay the souldiers, which served out of severall counties for defence against Scotland. 19.Ed.2.

In the Exchequer it was ordered in Parliam. Hil.2.Ed.3.
Rot.16. that where some souldiers had received of some of the Kings officers monies for their wages, were faine to give bond for repayment, that those bonds should all be redelivered.

But to clear all doubtes, the expresse statute of 18.E.3.c.7. is, That men of armes, Hoblers and Archers, chosen to go in the Kings service out of

of England, shall be at the Kings wages from the time they goe out of their counties where they were chosen, untill the time they come home againe.

19.H.7.cap.1.

11.H.7.cap.1.

Those that had any grant of lands from the King, and those that had any offices of the grant of the King, are to serve the King in his wars, but in both it is appointed, they shall have wages from the time they come from their houses, untill they shall returne.

2.& 3.E.6.c.2.

It is enacted, That no Captaine receiving souldiers serving by sea or by land, shal receive any wages for more souldiers or more time then they serve, and shall enter the daies of their entring into wages upon pain, &c.

All which Records and Statutes do prove, that the souldiers should be at the Kings wages; therefore this command for souldiers wages for 26. weekes when they goe from Portsmouth, is illegall, and expressly against the said Statutes; and so the assessment being entire, as well for the wages as the other charges, I hold to bee clearly illegall, and not to be demanded.

4.

That the command of this Writ to the Sheriffe

Sheriffe to asseſſe men at his owne diſcretion, is not legall, nor warranted by the Preſidents; for the Preſidents are commonly that aſſeſſements for contribution for making or ſetting out of ſhips, have been by Commiſſioners, which by preſumption had knowledge of ſuch matters as commonly Sheriffes have not. Alſo this leaveth to the Sheriffe too great a power to value mens eſtates, as to inhaunce whom he will, & to favour whom he will.

5. That the power to the Sheriffes & Maiors of townes, &c. to imprifon, eſpecially as it is uſed for non-payment of the mony, is illegall, and expreſſly againſt divers Statutes; for it is provided by *Magna Charta*. c. 29. *Quod nullus capiatur vel imprifonetur, nec ſuper eum ibimus niſi per iudicium Parium ſuorum vel per legem terre.*

Alſo in 5. *Ed. 3. cap. 9.* that none ſhall bee attached, or his goods ſeized contrary to the forme of the great Charter.

Alſo by the ſtatute made *Mich. 37. E. 3. cap. 18.* it is recited, that by that great Charter none ſhould bee taken or imprifoned but by due proceſſe of law, yet by colour of this Writ the Sheriffe may imprifon any perſon, yea any

Peere of the Realm; for although Peers are not to be arrested upon ordinary proceſſes between party & party, as it was reſolved in the Counteſſe of Rutlands caſe, in *Cok. l. 6. fol. 32.* yet for a contempt, and upon proceſſe of contempt, which is alwaies for the King, any Peere may be imprifoned, as it is reſolved by all the Lords and all the Judges in the Star-chamber in the Earle of Lincolnes caſe: and ſo the Sheriffe by colour of this Writ may arreſt any Peer, as for a contempt in not paying; but by the Booke caſe, *2. E. 3. fo. 2.* it is reſolved, that a Writ to imprifon one upon ſuggeſtion before hee be indicted, and without due proceſſe of law, was illegall; ſo for the caſe I hold this Writ to be illegall.

6. The laſt claufe of this Writ is, That by colour of this Writ more ſhould not be gathered then will be ſufficient for the neceſſary expences of the premiſſes; and that none that levie any mony towards theſe contributions, ſhall detaine the ſame with them, or imploy the ſame to other uſes: and that if more then did ſuffice were collected, it ſhould bee paid amongſt thoſe that paid, after a rateable proportion,

tion. These are reasonable clauses ; but as the course is taken, it is not to be performed : for no ship, nor tackling, nor munition, nor men, nor wages, nor victuals being provided, it is not to be known whether more be gathered or lesse then would suffice ; and there being mony gathered, it is of necessity either detained with the Collector or Sheriffe, or imployed to other uses then are appointed by the Writ, so the writ is not performed ; and the money assessed and collected, is not duely made nor collected, and the mony assessed and unpaid, cannot be duely demanded.

Admitting that the Writ were legall, & the commands therein legall, yet the assessment, as it is certified, is not sufficient to charge the Defendant ; for it is not certified that any ship with munition & men, and wages for men, and victuals, were prepared, and this is a yeare after the time that it should have beene prepared & sent to Portsmouth ; and if it were not prepared, there is no cause to charge the Defendant : and that not appearing to be done, it shal be conceived not to be done ; for if a man be charged with mony in consideration of a

7.

thing to be done before a certaine time, if the thing be not performed according to the time, none can bee charged for not being contributory to it after the time is past; for it is in nature of a condition precedent, to have a duty or summe of mony to be paid after the condition performed, and there he that will have the duty, must shew that the condition is performed: This appeareth in the case of 15. *H.7.1.* & *Cok l.7.fo.9. Ughtrees case.* And if the ship be not prepared according to the Writ, nor mony imployed for preparing a ship, for and in the name of the county, then every one that paid any mony, either voluntarily, as in obedience to the Writ, or compulsorily upon distresse, may demand their mony again of the Sheriffe, or of them that received it; for as they paid their mony, so it must be disposed of, and cannot be disposed of otherwise by any command whatsoever, although it be under the great Seale; for the command being under the great Seale to prepare and furnish a ship to such purpose as in the Writ is mentioned, and they paying it to that purpose, it cannot bee otherwise disposed, although it bee more for their advantage:

advantage: for private men having interest therein, that cannot bee taken from them, nor dispenced withall; therefore in *Cok li. 7. fol. 27.* in the case of penall lawes it is resolved, That if the penalty appointed to be forfeited upon a penall statute be given to the poore of the Parish where the offence is committed, the King cannot dispense with the penalty for that offence, because the poore have an interest therein; but if the penalty be given, part to the King, and part to the poore, the King may dispense with his owne part, but not with the part of the poore.

And where it is said, that this is by way of *Object.* accommodation, because the country cannot well know how to provide to content, and perhaps with more charge. To this is answered, they must doe it at their perill, if the Writ be legall, and then if it be done, they shall have the benefit thereof; for as my brother *Weston* and my brother *Berkley* have both agreed, if the ship were made when the service is done, the county for which it was made shall have the benefit of the ship and the munition, and of the service of the men, being made

made more expert against another time, and the ship may with some easie charge serve again, and nothing lost but the expences of the victuals, and the Kingdome shall be so much the more strengthened by having so many ships made or prepared; and they may have account of their mony how it was bestowed, and if any surplussage bee gathered, to have it restored; And that the law is so, that if mony be received of the county, and not imployed accordingly, the party so receiving it is accountable to pay a fine for the same to the King, and to the county for the money, appeareth by two Records, the one in Hill. 16.E.3.rot.23. in the Kings Bench, where two souldiers were indicted, for that they 8.E.3. taking 3.^{li}. a piece towards their armour, and to the bringing them to the place where they were appointed to serve the King in England in warres, went not, but tarried still in their houses, and retained the armour & the mony they had received for that purpose: They thereupon being convented, pleaded not guilty; and the one was found to go in service according to the appointment, so hee was discharged:

charged : and the other was found that he received the mony, and went not to doe the service, nor restored the armes nor mony ; thereupon he was committed to the prison, & paid to the King a fine, and found sureties to pay the mony to the Hundred again, from whom he had received it.

The other was Hill. 20. Ed. 3. rot. 57. in the Kings Bench, where two high Constables were indicted for that they 8. E. 3. had received 6. Markes of the townes in their Hundreds to set forth souldiers, and had not set them forth, but retained the mony, which they denying, it was found that they had received the mony for that purpose, and disbursed 41. s. 6. d. thereof towards the setting forth of souldiers, but had retained 38. s. 6. d. and not disbursed it ; thereupon they were fined and imprisoned, and after enlarged upon sureties to pay the mony they had retained undisbursed at the next time when the King commanded souldiers for those parts, By both which Records, being for offences done so long before, it appeareth that those that have received mony of the country to prepare ships, they are answerable unto the King or his Successors to pay a fine for their
employment.

employment of it otherwise, and are chargeable to those of the countie of whom they received it, for repayment thereof.

8. For the last point I conceive, that this *Certiorari* directed to the two that were late Sheriffes at the time of the assessment, and not to the Sheriffe that was at the time of the *Certiorari* awarded, who is the only and immediate officer to return the Writs, is not legall; for it is the first that hath beene seen of that kind: for all Writs are directed to some immediate Sheriffe, requiring him to demand of the former Sheriffes what they did upon the former Writ, and they are to returne to him what hath been done, and he to return the same to the Court, whereunto he is the immediate officer, and the former are not any officers.

So the *Scire fac'* thereupon grounded I conceive is not good, also the *Scire fac'* to warne *M^r. Hampden ad ostend' si quid pro se habeat, &c.* quare de predict. viginti solid. onerare non debet, not shewing to whom, is uncertaine and insufficient.

Thereupon I conclude upon the whole matter, That no judgement can be given to charge the Defendant.

FINIS.



Judgement was given against M^r Hampden
by the greater part of the Iudges: And when
the Iudges had delivered their opinions, the
Barons gave Iudgement Quod oneretur,
&c.

Afterwards in this present Parliament begun at
Westminster, 3. Novembris, Anno Dom.
1640. the Commons took into their conside-
rations the extrajudiciall opinions of the Iud-
ges, the Ship-writs, and this Iudgement a-
gainst M^r Hampden; and being read open-
ly in the House, after long debate, Die Lu-
nae, septimo die Decemb. 1640. these
foure severall Votes passed upon them, with-
out so much as one negative Voire to any of
them: (viz.)

That the charge imposed upon the Sub-
jects for the providing and furnishing
of Ships, and the assessments for raising of
money for that purpose, commonly called

A

Ship-

Ship-money, are against the Laws of the Realm, the Subjects right of Property, and contrary to former resolutions in Parliament, and to The Petition of Right.

2. **T**Hat the extrajudiciall opinions of the Judges, published in the Star-chamber, and inrolled in the Courts at Westminster, *in hæc verba;*

THE CASE.

Charles Rex.

“VVhen the good and safety of the
 “Kingdome in generall is concer-
 “ned, and the whole Kingdome in danger,
 “whether may not the King by Writ un-
 “der the Great Seal of England command
 “all the Subjects in this Kingdome at their
 “charge to provide and furnish such num-
 “ber of Ships, with men, victuall, and mu-
 “nition, and for such a time as hee shall
 “think fit, for the defence and safegard of
 “the Kingdome from such danger and
 “perill, and by Law compell the doing
 “thereof, in case of refusall or refractori-
 “nesse;

“nesse; And whether in such case is not the
 “King the sole Judge both of the danger,
 “and when and how the same is to be pre-
 “vented and avoided.

C. R.

THEIR OPINIONS.

“**M**AY it please Your most excellent
 “Majesty, We have, according to
 “Your Majesties command, severally, and
 “every man by himself, and all of us toge-
 “ther, taken into serious consideration the
 “Case and questions signed by Your Ma-
 “jesty, and inclosed in Your Letter: And
 “we are of opinion, That when the good
 “and safety of the Kingdome in generall is
 “concerned, and the whole Kingdome in
 “danger, Your Majesty may by Writ under
 “the Great Seale of England command all
 “the Subjects of this Your Kingdome at
 “their charge to provide and furnish such
 “number of Ships with men, victuall, and
 “munition, and for such time as Your Ma-
 “jesty shall think fit for the defence & safe-
 “gard

“gard of the Kingdome from such danger
 “and perill; and that by Law Your Majesty
 “may compell the doing thereof in case of
 “refusall or refractorinesse. And we are also
 “of opinion, that in such case Your Maje-
 “sty is the sole Judge both of the danger,
 “and when and how the same is to be pre-
 “vented and avoided.

In the whole, and in every part of them are
 against the Lawes of the Realme, the Right
 of Property, and the liberty of the Subjects,
 and contrary to former Resolutions in Parli-
 ament, and to The Petition of Right.

3. **T**Hat the Writ following in *hæc verba* :

*Memorād. quod
 xxvii. die Feb.
 1640. anno reg-
 ni Dom. Regis
 Car. 16. istud ir-
 rotul. & omnia
 & sing. in eodē
 contenta & ex-
 press. vacant. per
 judic. Domini
 spūaliū & tem-
 poral. in Cur.
 Parliamenti.
 Per Joh. Brown
 Cleric. Parliam.*

CHARLES by the Grace of
 God King of England, Scot-
 land, France, and Ireland, Defender
 of the Faith, &c. To Our right
 trusty and welbeloved Councillor,
Thomas Lord Coventry, Keeper of
 Our great Seal of England, greeting.

These

These are to will and require you,
that for the safegard of the Seas, and
defence of the Realme, you issue
forth or cause to be issued forth of
our high Court of Chancery these
ensuing Writs in the forme follow-
ing, with Duplicats of them, under
Our Great Seale of England, unto
the Counties, Cities, Townes and
places hereafter ensuing, and for so
doing this shall be your warrant.

R Ex, &c. Vic. Com. nostri Buck. Ballivis &
Burgensibus Burgi & paroch. de Bucking-
ham: Maiori, Ballivis, & Burgensibus Burgi de
Chepping Wicombe, alias Wicombe: Ballivis, Al-
dermannis, & Burgensibus Burgi de Aylesbury,
ac probis hominibus in eisdem Burgis & parochiis,
& membris eorundem, & in Villis de Agmondisham,
Wendover, & Marlowe magna, ac in omnibus aliis
Villis, Burgis, Villat. Hamlet. & aliis locis in dicto
Com. Buck. salutem. Quia datum est nobis intelligi

quod prædones quidam, Piratæ & maris Grassatores
 tam nominis Christiani hostes, Mahumetani, quam alii
 congregat. Naves & bona ac mercimonia non solum
 Subditorum nostrorum, verumetiam Subditorum
 Amicorum nostrorum in mari, quod per gentem An-
 glicanam ab olim defendi consuevit, nefarie diripi-
 entes & spoliantes ea, ad libitum suum deportavere,
 hominesq; in eisdem in captivitatem miserrimam man-
 cipantes. Cumq; ipsos conspiciamus, Navigium indies
 præparantes ad Mercatores nostros ulterius mole-
 stand. & regnum gravand. nisi citius remedium
 apponatur, eorumq; conatui viriliter obvietur: consi-
 deratis etiam periculis quæ undiq; his guerrinis tem-
 poribus imminet, ita quod nobis & Subditis nostris
 defensionem maris & regni, omni festinatione qua
 poterimus accelerare convenit: Nos volentes defen-
 sioni regni, tuitioni maris, securitati Subditorum no-
 strorum salvæ conductioni Navium & Merchandi-
 zarum ad regnum nostrum Angliæ venient'. & de
 eodem regno ad partes externas transeunt'. (auxili-
 ante Deo) providere; maxime cum nos & Progenito-
 res nostri Reges Angliæ Domini maris prædict. sem-
 per hætenus extiterint, & plurimum nos taderet, si
 honor iste regnis nostris temporibus depereat, aut in
 aliquo imminuatur. Cumq; onus istud defensionis quod
 omnes

omnes tangit, per omnes debeat supportari, prout per legem & consuetudinem regni nostri fieri consueverit. Vobis præfat. Vicecom. Maior. Ballivis, Aldermannis, Burghensibus, probis hominibus, & omnibus aliis quibuscunq; supramentionat. Villis, Burgis, Vill. Hamlet. & locis suprad. eorumq; membris in fide & ligeantia quibus nobis tenemini, & sicut Nos & honorẽ nostr. diligitis, necnon sub forisfactur. omniumq; quæ nobis forisfacere poteritis firmiter injungend. Mandamus, quod unam Navem de guerra portagii quadringent. & quinquagint. doliorum cum hominibus tam Magistris peritis quam Marinariis valentioribus & expertis, centum & octoginta ad minus, ac etiam tormentis tam majoribus quam minoribus pulvere tormentario ac hastis & telis, alijsq; armatur. necessar. pro guerra sufficien. & cum duplici eskipamento, necnon cum victual. usq; ad primum diem Marcii jam proximẽ sequentem ad tot. homines competent. & ab inde in. viginti sex septimanas ad custodia Vestra tam in victual. quam hominum salariis & aliis ad guerram necessariis per tempus illud super defensionem maris in obsequio nostro in Comitiva custodis maris cui custodiam maris ante prædictum primum diẽ Martii committimus, & prout ipse ex parte nostra dictaver. moratur. preparari, & ad Portum
de

de Portesmouthe citra dictum primum diem Martii, duci faciatis: Ita quod sint ibidem eodem die ad ultimum ad proficiscend. exinde cum Navibus nostris & Navibus aliorum fidelium Subditorum nostrorum pro tuitione maris & defensione vestrum & vestrorum, repulsioneq; & debellatione quorumcunq; que Mercatores nostros & alios subditos & fideles prædictos in Dominia nostra ex causa Mercatur. se divertent. vel ab inde ad propria declinant super mare gravare seu molestare satagentium. Assignavimus autem vos præfat. Vicecom. com. nostri Buck. Maiores & Ballivos Villarum & Burgorum prædict. aut aliquos sex vel plures vestrum, quorum te præfat. Vic. Com. nostri Buck. unum esse volumus, infra triginta dies post receptionem huius Brevis ad assignand. quantum de custagiis prædictis super prædict. Burg. & paroch. de Buckingham ac prædict. Burg. de Chepping Wicombe, alias Wicombe, & prædict. Burgo de Aylesbury, cum membris eorundem, & Vill. de Agmondisham, Wendover, & Marlowe magna, cum membr. eorundem, separatim poni aut assignari debeat. Et si huiusmodi Assessamenta infra prædict. triginta dies per vos sex vel plures vestrum fieri non contigerint, tunc assignavimus te præfat. Vic. Com. nostri Buck. ad assignand. huiusmodi super prædict. vill. & burgos.

burgos & membr.eorundem faciend. prout rationabili-
liter videris faciend. Et volumus quod de toto facto
tuo tu præfat. Vic. Buck. sub sigillo tuo prædictos
Maior. & Ballivos reddas certiores. Assignavimus
etiam vos præfat. Ballivos & Burgenses Burgi &
paroch. de Buckingham ad assidend. omnes homines
in prædicto Burgo & paroch. & membris eorun-
dem, & terr. tenen. in eisdem (Navem vel partem
Navis prædict. non habentes, vel in eadem non deser-
vientes) ad contribuend. expens. circa provisionem
præmissorum necessar. & super prædictum Burgum
& paroch. cum membr. eorundem sic ut præfertur as-
sidend. & ponend. viz. quemlibet eorum juxta sta-
tum suum & facultates suas & portiones super ipsos
assessas per distractiones aliosve modos debet. levand.
Et Collectores in hac parte nominand. & constituend.
& omnes eos quos rebelles & contrarios inveneritis
in præmissis, carceri mancipand. in eod. moratur. quo-
usq. pro eorum deliberatione ulterius duxerimus or-
dinand. Assignavimus etiam te præfat. Maiorem
Ville & Burgi de Chepping Wicombe ad assidend.
omnes homines in præd. Vill. & Burgo, & membr.
ejusdem, & terr. tenen. in eisdem Navem vel partem
Navis non habentes, vel in eadem non deservientes
ad contribuend. expensis circa provisionem præmissor.
B necessar.

necessar. Et super prædictum Burgum cum membris
 ejusdem sic ut præfertur assidend. & ponend. videl.
 quemlibet eorum juxta statum suum & facultates
 suas & portiones super ipsos assessas per districtiones
 aliosve modos debitos levand. Et Collectores in hac
 parte nominand. & constituend. & omnes eos quos
 rebelles & contrarios inveneris in præmissis, carceri
 mancipand. in eod. moratur. quousque pro eorum deli-
 beratione ulterius duxerimus ordinand. Assignavi-
 mus etiam vos præfat. Ballivos, Aldermannos, &
 Burghenses Burghi de Aylesbury prædict. ad assidend.
 omnes homines in eodem Burgo & membris ejusdem
 & terr. tenen. in eisdem (Navem vel partem Na-
 vis prædict. non habentes, vel in eadem non deservi-
 entes) ad contribuend. expensis circa provisionem
 præmissorum necessar. et super prædict. Burgum et
 membr. ejusdem sic ut præfertur assidend. et ponend.
 videl. quemlibet eorum juxta statum suum et facul-
 tates suas et portiones super ipsos assessas per districti-
 ones aliosve modos debitos levand. Et collectores in hac
 parte nominand. et constituend. et omnes eos quos re-
 belles et contrarios inveneritis in præmissis, carceri
 mancipand. in eod. moratur. quousque pro eorum de-
 liberatione ulterius duxerimus ordinand. Et ulterius
 assignavimus te præfat. Vic. Com. nostri Buck. ad
 assidend.

afsidend. omnes homines in prædictis villis de Ag-
 mondisham, Wendover, et Marlowe magna, et in
 membris eorundem, ac in omnibus aliis Villis, Bur-
 gis, Villat. Hamlet. et aliis locis in dicto Com. Buck.
 et terr. tenen. in eisdem (Navem vel partem Navis
 prædict. non habentes, vel in eadem non deservientes)
 ad contribuend. expensis circa provisionem præmis-
 sorum necessar. Et super præd. Villas, Burg. Villat.
 Hamlet. et locos cum membris eorundem sic ut præ-
 fertur afsidend. et ponend. videl. quemlibet eorum
 juxta station suum, et facultates suas, et portiones su-
 per ipsos assessas per distractiones aliosve modos debi-
 tos levand. Et collectores in hac parte nominand. et
 constituend. et omnes eos quos rebelles et contrarios in-
 veneris in præmissis, carceri mancipand. in eod. mo-
 ratur. quousque pro eorum deliberatione ulterius du-
 xerimus ordinand. Et ulterius vobis mandamus quod
 circa præmissa diligent. intendatis, et ea faciatis, et
 exequamini cum effectum sub periculo incumb. No-
 lumus autem quod colore prædicti mandati nostri plus
 de eisdem hominibus levare fac. quam ad præmissa
 sufficiet expensas necessar. aut quod quisquam qui pe-
 cuniam de contributionibus ad præd. custag. faciend.
 levaverit, eam vel partem inde aliquam penes se deti-
 neat, vel ad alios usus quovis quesito colore appro-
 priare

priare præsumat, volentes quod si plus quam sufficiat collectum fuerit, hoc inter solventes pro rata portionis ipsis contingen. exsolvatur. T. &c.

Convenit cum Recordo & exam.

Per me JOH. CASSE.

And the other Writs, commonly called the Ship-writs, are against the Lawes of the Realme, the Right of Property, and the liberty of the Subjects, and contrary to former resolutions in Parliament, and to the Petition of Right.

4

THat the Judgement in the Exchequer in *M^r Hampdens Case*, a Transcript whereof followeth in hæc verba: (*viz. Quod separalia brevvia prædicta & retorna eorundem, ac schedul. prædict. eisdem annexat. ac materia in eisdem content. sufficien. in lege exist. ad præf. Ioh. Hampden de prædictis viginti solidis super ipsum in forma & ex causa prædict. assessis, onerand. Ideo consideratum est per eosdem Barones, quod prædictus Iohannes Hampden de eisdem viginti solidis oneretur, & inde satisfaciatur.*) In the matter and substance thereof

of, and in that it was conceived that M^r *Hampden* was any way chargeable, is against the Laws of the Realme, the right of Property, the liberty of the Subjects, and contrary to former Resolutions in Parliament, and to the Petition of Right.

These Votes were afterwards transmitted by the House of Commons to the Lords, and delivered by M^r S^r *John* now his Majesties Solicitor generall, at a conference of both Houses of Parliament, held 16. Car. 1640.

That the extraordinary opinions intoll'd in the Exchequer Chamber, and in other Courts concerning Ship-money and all the proceedings thereupon are illegal in part and

Die Mercur. 20. die Ian. 1640.

It was resolved by the Lords upon the question,
Nemine contradicente :

1. **T**hat the Ship-writs, the extrajudiciall opinions of the Judges therein, both first and last, and the Judgement given in *M^r Hampdens Case*, and the proceedings thereupon in the Exchequer Chamber, are all illegall, and contrary to the Lawes and Statutes of this Realme, contrary to the Rights and Proprieties of the Subjects of this Realme, contrary to former Judgements in Parliaments, and contrary to the Petition of Right.

Likewise resolved upon the Question,
Nemine contradicente :

2. **T**hat the extrajudiciall opinions inrolled in the Exchequer Chamber, and in other Courts concerning Ship-money, and all the proceedings thereupon are illegall in part
 and

and in whole, and contrary to the Laws and Statutes of this Realm, contrary to the rights and proprieties of the Subjects of this Realm, and contrary to former Judgements in Parliaments, and contrary to the Petition of Right.

Die Veneris, 26. die Februarii, 1640.

VPon the report of the Right Honourable the Lords Committees appointed to consider of the way of vacating of the Judgement in the Exchequer concerning Ship-money, It was ordered by the Lords Spirituall and Temporall in the high Court of Parliament assembled, That the Lord Keeper, or the Master of the Rolls, the two Lo: Chiefe Justices, and the Lo: Chiefe Baron, and likewise the Chiefe Clerke of the Star-chamber, shall bring into the Upper House of Parliament the Record in the Exchequer of the Judgement in M^r *Hampdens* Case concerning Ship-mony; and also the severall Rols in each severall Court of K. Bench, Common Pleas, Exchequer, Star-chamber, and

and Chancery, wherein the Judges extrajudiciall opinions in the Cases made touching Ship-money be entred, and that a *Vacat* shall be made in the Upper House of Parliament of the said severall Records. And likewise the Judgement of Parliament touching the illegality of the said Judgements in the Exchequer, and the proceedings thereupon, and touching the illegality of the extrajudiciall opinions of the Judges in the said severall Courts concerning Ship-money, be annexed and apostiled unto the same: And that a Copie of the judgement of the Parliament concerning the illegality of the said Judgement in the Exchequer, and the said extrajudiciall opinions of the said Judges concerning Ship-money, be delivered to the severall Judges of Assize; And that they be required to publish the same at the Assizes in each severall County within their Circuits, and to take care that the same be entred and inrolled by the severall Clerks of Assizes; And if any entry be made by any *Custos Rotulorum*, or Clerke of Assize, of the said Judgement in the Exchequer, or of the said extrajudiciall opinions of the
the

the Judges, that severall *Vacats* be made there-
of, *per judicium in Parlamento*. And that an Act
of Parliament be prepared against the said
Judgement and extrajudiciall opinions, and
against the proceedings touching Ship mo-
ney.

Memorandum quod vicesimo septimo die Febr.
1640. Anno q̄ regni Regis Dñi nostri Caroli
Anglie decimo sexto:

VAcatur istud Recordum et Iudicium inde ha-
bitum per considerationē et iudicium Dñorum
Spiritual. et Temporal. in Curia Parliam. et irrotu-
lamentum ejusdem cancelatur.

Memorandum quod vicesimo septimo die Febr. præd.

Istud Irrot. et omnia et singula in eodē contenta et
expressa vacantur per iudicium Dñorum Spiritu-
alium et Temporal. in Curia Parliam.

AND that all the Rolls be rased crosse
with a pen, and subscribed with the
Clerke of the Parliaments hand. All which
was accordingly done in open Court.

C

After

After this it was resolved upon the Question,
Nemine contradicente:

That the resolutions of the Judges touch-
 ing the Shipping-money, and the Judg-
 ment given against Mr *Hampden* in the Ex-
 chequer, and all the proceedings thereupon,
 are against the Great Charter, and therefore
 void in Law.

Resolved upon the Question,
Nemine contradicente:

That *Vacats* and Cancellations shall be
 made of the Resolutions of the Judges
 touching the Shipping-money; And of the
 inrolments thereof in the severall Courts,
 and of the Warrants for Ship-writs, and pro-
 ceedings therein; And the Judgement given
 against Mr *Hampden*, and proceedings there-
 upon; And that entries be made of those *Va-*
cats upon the severall Rolls, according to the
 forme read in the House.

Eodem

Eodem die,

ORdered, that these resolutions be added to the former Judgements of this House concerning Shipping-money, which the Judges are to publish at the Assizes in their severall Counties, and to be entred and inrolled in the severall Counties by the Clerk of the Assizes.

See 3^d next leaf.

F I N I S.

In Iudge CROOKES Argument correct,

PAge 3. l. 13. *reade valentioribus. l. 15. r. pulvere. p. 19. l. 13. r. injusto. p. 21. l. 17. r. piccage. p. 23. l. 16. r. Commissions. p. 28. l. 7. r. proveth. p. 29. l. 2. r. proverb. p. 30. l. 2. r. Dane-guilt. p. 35. l. 6. r. 394. a. p. 57. l. 3. r. Carlile. ibid. for 35. r. 30. p. 70. l. penult. r. seek for such men, & lult. dele, for such men. p. 74. l. 7. dele, and.) p. 76. l. 14. continue the line. p. 101. in marg. for 2. put 3. p. 106. l. 15. r. so for that cause.*

In Iudge HUTTONS Argument :

Page 14. l. 10, 11. reade, and can admit no other. p. 16. l. 17. r. to be observed. p. 17. l. 19. r. humbly pray your Majesty. p. 19. l. 10. r. toll Traverse. p. 24. l. 20. r. Gasconie. lult. other Statutes. p. 35. l. 11. dele (to Petitions) p. 36. l. 1. dele for. l. 16. r. the record in Court. p. 37. l. 6. r. The Parliament roll recites. l. ult. r. fourth point. p. 44. l. 20. r. these illegall. p. 46. l. 9. r. per Gentem. p. 47. l. 2. r. of Argiers. l. 12. r. with all the other particulars. 48. l. 23. r. to lead the uses of those preceding. p. 49. l. 24. r. fol. 68. p. 50. l. 22. r. it is very. p. 55. l. 9. dele, not. p. 57. l. 17. r. Burton.

Edm. de

Ordered that the resolutions be added
to the former Judgments of this
House concerning the Money which
the Judges have paid the Alices in
their several Counties to be entered and
rolled in the Court by the Clerk
of the Alices.



FINIS

In Judge Crookes Judgment

1. The first point is whether the
Alices are bound by the
Judges' decision in the
County of Alices. The
Alices are bound by the
Judges' decision in the
County of Alices.

In Judge Hutton's Judgment:

1. The first point is whether the
Alices are bound by the
Judges' decision in the
County of Alices. The
Alices are bound by the
Judges' decision in the
County of Alices.

See 1. Croke. Cas. Chambers. v. St. Edward Brumfield, Late Mayor
of London. Mill. 16. Car. in B. R. Trespass of false imprisonment
for committing J. pl. to J. prison at New-gate. The Just. justify,
by virtue of J. King's writ, dated 4. Aug. 11. Car. for not paying of
money assessed upon him, towards finding of a ship. And being argued
at J. Barre this Term, it was now moved to have Judgment without any
further argument, because it had been voted & resolved in J. Upper-
-house, & J. House of Commons, nullo contradicente, that J. said writ,
& what was done by colour thereof, was illegal. Therefore J. Court
would not further dispute thereof, but gave Judgment for J. pl.

See likewise J. statute of 17. Car. 1. c. 14. by which J. proceedings touching
ship-money, are declared to be unlawfull, & all records & process con-
-cerning J. same are made void. 1.

Now also J. words of that statute, which are — Be it declared & enacted
by which word — declared — J. Parliament shewed their minds to be,
that that statute but was declaratorie of J. Common Law, & not intro-
-ductory of a new law. For which see 3. Coke. 82. b. c.

F. H.